Bulletin No. 1996–42
October 15, 1996

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 96–50, page 4.
LIFO; price indexes; department stores. The August 1996 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 1996.

REG–209826–96, page 10.
Proposed regulations under section 671 of the Code relate to the application of the grantor trust rules to nonexempt employees' trusts. A public hearing will be held on January 15, 1997.

Notice 96–51, page 6.
Inflation-indexed debt instruments. Proposed and temporary regulations under sections 1275(d) and 1286 of the Code will be issued to provide guidance on the federal income tax treatment of Treasury Inflation-Protection Securities and other debt instruments with similar terms. This notice also describes, in general terms, the debt instruments that are expected to be subject to the regulations and how these instruments are expected to be taxed under the regulations.

EXEMPT ORGANIZATIONS

Announcement 96–107, page 27.
A list is given of organizations now classified as private foundations.

EMPLOYMENT TAX

Announcement 96–105, page 19.
Comments are solicited on a proposed tip reporting agreement for use in the hairstyling industry.

Announcement 96–106, page 23.
Comments are solicited on a proposed tip reporting agreement for use in the gaming industry.

ADMINISTRATIVE

Notice 96–52, page 8.
Work opportunity tax credit; notice of transition rule under section 51 of the Code. The Service will provide for a transition period for certain employers that did not complete Form 8850 by the date an applicant is offered a job. The transition period will allow employers to complete and submit Form 8850 to the State Employment Security Agency, although the form was not completed on or before the day the employer offered the applicant a job.

Finding Lists begin on page 33.
Announcements of Disbarments and Suspensions begin on page 30.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is ''protecting the revenue.'' The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The August 1996 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 1996.

Rev. Rul. 96–50

The following Department Store Inventory Price Indexes for August 1996 were issued by the Bureau of Labor Statistics on September 13, 1996. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, August 31, 1996.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Aug. 1995	Aug. 1996	Percent Change from Aug. 1995 to Aug. 1996[1]
1. Piece Goods	534.7	524.3	−1.9
2. Domestics and Draperies	663.1	642.6	−3.1
3. Women's and Children's Shoes	622.3	640.3	2.9
4. Men's Shoes	923.8	895.9	−3.0
5. Infants' Wear	620.6	610.3	−1.7
6. Women's Underwear	519.0	525.8	1.3
7. Women's Hosiery	287.5	287.5	0.0
8. Women's and Girls' Accessories	550.4	546.2	−0.8
9. Women's Outerwear and Girls' Wear	404.5	381.2	−5.8
10. Men's Clothing	604.6	611.7	1.2
11. Men's Furnishings	542.4	567.9	4.7
12. Boys' Clothing and Furnishings	477.3	485.4	1.7
13. Jewelry	1011.2	1023.8	1.2
14. Notions	868.8	770.0	−11.4
15. Toilet Articles and Drugs	861.5	885.1	2.7
16. Furniture and Bedding	659.2	669.2	1.5
17. Floor Coverings	572.4	588.7	2.8
18. Housewares	783.4	810.6	3.5
19. Major Appliances	247.7	244.8	−1.2
20. Radio and Television	82.1	78.8	−4.0
21. Recreation and Education[2]	114.2	112.1	−1.8
22. Home Improvements[2]	122.2	125.9	3.0
23. Auto Accessories[2]	107.1	107.2	0.1
Groups 1 – 15: Soft Goods	585.2	582.9	−0.4
Groups 16 – 20: Durable Goods	465.3	469.2	0.8
Groups 21 – 23: Misc. Goods[2]	114.1	113.1	−0.9
Store Total[3]	544.9	544.0	−0.2

[1] Absence of a minus sign before percentage change in this column signifies price increase.
[2] Indexes on a January 1986=100 base.
[3] The store total index covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622–4970 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Inflation-Indexed Debt Instruments

Notice 96–51

The Department of the Treasury plans to issue securities that are adjusted for inflation and deflation (''Treasury Inflation-Protection Securities''). See Amendment to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds, which was filed with the Federal Register on September 25, 1996. To provide guidance on the federal income tax treatment of these securities and other debt instruments with similar terms, the Internal Revenue Service (IRS) intends to issue proposed and temporary regulations under §§ 1275(d) and 1286 of the Internal Revenue Code prior to the first issuance of the securities. This notice describes, in general terms, the debt instruments that are expected to be subject to the regulations and how these instruments are expected to be treated under the regulations.

TREASURY INFLATION-PROTECTION SECURITIES

As described in the Offering Circular, a Treasury Inflation-Protection Security will provide for semiannual payments of interest and a payment of principal at maturity. In general, each payment will be adjusted to take into account any inflation or deflation that occurs between the issue date of the security and the payment date.

The principal amount of a Treasury Inflation-Protection Security will be adjusted for inflation and deflation based on monthly changes in the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI-U), which is published by the Bureau of Labor Statistics of the Department of Labor. The inflation-adjusted principal amount of the security for the first day of any month will be determined by multiplying the principal amount at issuance by a fraction, the numerator of which is the value of the index for the adjustment date and the denominator of which is the value of the index for the issue date. The inflation-adjusted principal amount of the security for a day other than the first day of a month will be determined based on a straight-line interpolation between the inflation-adjusted principal amount for the first day of the month and the inflation-adjusted principal amount for the first day of the next month. The value of the index used to determine the adjustment for the first day of a particular month will be the value of the index reported for the third preceding month.

Each semiannual payment of interest will be determined by multiplying a single fixed rate of interest by the inflation-adjusted principal amount of the security for the date of the interest payment. Thus, although the interest rate will be fixed, the amount of each interest payment will vary with changes in the principal of the security as adjusted for inflation and deflation.

A Treasury Inflation-Protection Security also will provide for an additional payment at maturity if the security's inflation-adjusted principal amount for the maturity date is less than the security's principal amount at issuance. The amount of the additional payment will equal the excess of the security's principal amount at issuance over the security's inflation-adjusted principal amount for the maturity date.

INFLATION-INDEXED DEBT INSTRUMENTS

In general, the regulations will apply to an inflation-indexed debt instrument, regardless of the identity of the issuer. An inflation-indexed debt instrument generally will be defined in the regulations as a debt instrument that satisfies the following conditions:

(1) The debt instrument is issued for U.S. dollars and all payments of principal and interest on the instrument are denominated in U.S. dollars.

(2) The principal amount of the debt instrument is adjusted for inflation and deflation. The adjustment must be measured by changes in the current value of a single general price or wage index published monthly by an agency of the United States Government (e.g., the CPI-U). A current value of an index is a value of the index that has been updated and published within the six month period preceding the date of the adjustment.

(3) The debt instrument provides for an appropriate method to calculate its inflation-adjusted principal amount for each day to reflect the monthly changes in the current value of the price or wage index. For example, the inflation-adjusted principal amount for the first day of each month is determined by reference to the change in the index for the third preceding month, and the inflation-adjusted principal amount for any other day is determined based on straight-line interpolation between the inflation-adjusted principal amount for the first day of the month and the inflation-adjusted principal amount for the first day of the next month.

(4) Each stated interest payment on the debt instrument, if any, is computed by multiplying a single fixed rate of interest by the inflation-adjusted principal amount for the date of the interest payment.

(5) The payments on the debt instrument are not subject to any contingencies other than the inflation contingency. For this purpose, a contingency that is remote or incidental will be ignored. In addition, a payment will not be contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances.

Notwithstanding the condition described in paragraph (5) above, a debt instrument will not fail to qualify as an inflation-indexed debt instrument merely because it provides for a minimum guarantee payment. A minimum guarantee payment is an additional payment that is made at maturity if the debt instrument's inflation-adjusted principal amount for the maturity date is less than the instrument's principal amount at issuance. The amount of the additional payment must be no more than the excess of the debt instrument's principal amount at issuance over the instrument's inflation-adjusted principal amount for the maturity date.

An example of a debt instrument that satisfies the above conditions is a Treasury Inflation-Protection Security.

If a debt instrument qualifies as an inflation-indexed debt instrument, one of two methods will apply to account for qualified stated interest and original issue discount (OID) on the instrument: the coupon bond method or the discount bond method. In general, both methods will measure the amount of qualified stated interest and OID that accrues on an inflation-indexed debt instrument based on changes in the principal amount of the debt instrument and constant yield principles.

The discount bond method will apply a formula to determine the amount of

OID that accrues during an accrual period on an inflation-indexed debt instrument. This formula is based on changes in the inflation index over the term of the debt instrument and the yield of the debt instrument at issuance. In the case of certain inflation-indexed debt instruments, however, the accruals of OID on the debt instruments can easily be determined without the use of the formula. Therefore, the regulations will provide a simplified version of the discount bond method for these debt instruments (the coupon bond method).

COUPON BOND METHOD

The coupon bond method will apply to an inflation-indexed debt instrument that satisfies two conditions: First, there is no more than a de minimis difference between the debt instrument's issue price and its principal amount at issuance. Second, all stated interest payable on the debt instrument is qualified stated interest. For purposes of the regulations, stated interest will be qualified stated interest if it is unconditionally payable in cash at least annually. The coupon bond method will apply to Treasury Inflation-Protection Securities that are not stripped into principal and interest components.

If an inflation-indexed debt instrument qualifies for the coupon bond method, the qualified stated interest payable on the debt instrument will be taken into account under the taxpayer's regular method of accounting. Any increase in the inflation-adjusted principal amount will be treated as OID for the period in which the increase occurs. Any decrease in the inflation-adjusted principal amount (a deflation adjustment) will be taken into account under the rules for deflation adjustments described below.

For example, if a taxpayer who uses the cash receipts and disbursements method of accounting (cash method) holds a Treasury Inflation-Protection Security for an entire calendar year, the taxpayer generally will include in income the interest payments received on the security during the year. In addition, the taxpayer will include in income an amount of OID measured by subtracting the inflation-adjusted principal amount of the security for January 1 of the year from the inflation-adjusted principal amount of the security for January 1 of the next year. If the taxpayer uses an accrual method of accounting rather than the cash method, the taxpayer will include in income the qualified stated interest that accrued on the debt instrument during the year and an amount of OID measured by subtracting the inflation-adjusted principal amount of the security for January 1 of the year from the inflation-adjusted principal amount of the security for January 1 of the next year.

DISCOUNT BOND METHOD

If an inflation-indexed debt instrument does not qualify for the coupon bond method (e.g., because it is issued at a discount), the instrument will be subject to the discount bond method. In general, the discount bond method will require taxpayers to make current adjustments to their OID accruals on the debt instrument to account for changes in the inflation-adjusted principal amount.

Under the discount bond method, a taxpayer will accrue OID using the four steps provided under § 1.1272-1(b)(1) of the Income Tax Regulations (constant yield method). However, the debt instrument's yield to maturity will be determined as of the issue date by assuming no inflation or deflation, and the OID allocable to an accrual period (n) will be determined by using the following formula:

$$OID_{(n)} = \{AIP_{(n)} \times [r + inf_{(n)} + (r \times inf_{(n)})]\} - QSI_{(n)} \text{ where,}$$

r = yield of the debt instrument determined as of the issue date by assuming no inflation or deflation, adjusted for the length of the accrual period;

$inf_{(n)}$ = percentage change in the inflation index for period (n);

$AIP_{(n)}$ = adjusted issue price at the beginning of period (n); and

$QSI_{(n)}$ = qualified stated interest allocable to period (n).

If the formula produces a negative amount of OID, this amount (deflation adjustment) will be taken into account under the rules for deflation adjustments described below.

DEFLATION ADJUSTMENTS

In general, a deflation adjustment will reduce the amount of interest includible in income by a holder with respect to the debt instrument for the taxable year. If the amount of the deflation adjustment exceeds the interest otherwise includible in income for the taxable year, the excess will be treated as an ordinary loss by the holder for the taxable year. However, the amount treated as an ordinary loss will be limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, this excess will be carried forward to offset interest income on the debt instrument in subsequent taxable years. In general, any excess remaining upon the sale, exchange, or retirement of the debt instrument will result in a loss to the holder for federal income tax purposes. Similar rules will apply to determine an issuer's interest deductions and income for the debt instrument.

MINIMUM GUARANTEE

Under both the coupon bond method and the discount bond method, a minimum guarantee payment as described above generally will be ignored until the payment is made. If there is a minimum guarantee payment, the payment will be treated as a payment of interest.

ACCRUALS OF QUALIFIED STATED INTEREST

In certain situations, a taxpayer will have to determine how much qualified stated interest, if any, has accrued as of a certain date on an inflation-indexed debt instrument. The regulations will provide that the amount of accrued but unpaid qualified stated interest as of any date is determined by using the principles of § 1.446–3(e)(2)(ii) (relating to notional principal contracts). For example, if the interval between interest payment dates spans two taxable years, a taxpayer using an accrual method of accounting will determine the amount of accrued qualified stated interest for the first taxable year by reference to the inflation-adjusted principal amount for the last day of the taxable year.

SUBSEQUENT HOLDERS

For purposes of determining whether a holder acquires an inflation-indexed debt instrument at a premium or with market discount, the amount payable at maturity on the instrument will be treated as equal to the instrument's inflation-adjusted principal amount for the day the holder acquires the instrument. Any premium or market discount will be taken into account over the remaining term of the debt instrument by making the same assumption.

STRIPS

A Treasury Inflation-Protection Security will be eligible upon issuance for the Department of the Treasury's Separate Trading of Registered Interest and Principal of Securities (STRIPS) program. Under this program, the interest and principal components of a Treasury Inflation-Protection Security may be transferred as separate instruments (stripped bonds and coupons). In general, § 1286 treats the holder of a stripped bond (or coupon) as if the holder purchased a newly issued debt instrument that has OID. The regulations will provide that the holder of a component of a Treasury Inflation-Protection Security that is stripped under the Treasury STRIPS program must use the discount bond method to account for the OID on the component.

REOPENINGS

The regulations will provide that a reopening of Treasury Inflation-Protection Securities will be a qualified reopening for purposes of § 1.1275–2(d)(2), provided the reopening occurs not more than one year after the original securities were first issued to the public.

EFFECTIVE DATE

The regulations will apply to debt instruments issued on or after the date the regulations are published in the Federal Register.

REQUEST FOR COMMENTS

The IRS and the Department of the Treasury request comments on the rules described in this notice. Comments should be submitted in writing on or before October 28, 1996 to: CC:DOM: CORP:R (Notice 96–51), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments (1) may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM: CORP:R (Notice 96–51), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or (2) may be submitted electronically via the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. All comments will be available for public inspection and copying.

CONTACT PERSONS

For further information regarding this notice, contact Jeffrey W. Maddrey on (202) 622–4443 or William E. Blanchard on (202) 622–3950 (not toll-free numbers).

Work Opportunity Tax Credit — Pre-Screening Notice

Notice 96–52

This Notice provides temporary transition relief for employers with respect to the Work Opportunity Tax Credit (WOTC) that was enacted as part of the Small Business Job Protection Act of 1996, Pub. L. No. 104–188 (August 20, 1996).

BACKGROUND

The WOTC provides a tax credit for employers who hire individuals belonging to one of the following groups: (1) qualified recipients of benefits under AFDC or a successor program; (2) qualified veterans; (3) qualified ex-felons; (4) high-risk youth; (5) vocational rehabilitation referrals; (6) qualified summer youth employees; or (7) qualified food stamp recipients. *See* Internal Revenue Code section 51. The WOTC is effective for wages paid to qualified individuals whose first day of work for the employer is on or after October 1, 1996.

For purposes of the WOTC, a prospective employee is not considered a member of one of the targeted groups unless the individual is certified as such by a State Employment Security Agency (SESA). The SESA certification requirement may be satisfied in either of two ways:

Under one approach, an employer may receive a certification from a SESA, on or before the day the prospective employee begins work, stating that the individual is a member of a targeted group. Section 51(d)(11)(A)(i).

Under the other approach, the employer must complete a ''pre-screening notice'' with respect to the prospective employee on or before the day the individual is offered employment, and then, within 21 days after the individual begins work, must submit that notice, signed by the individual and the employer under penalties of perjury, to the SESA as part of a request for certification. Section 51(d)(11)(A)(ii). If an employer uses this approach, the employer must also receive a certification from the SESA that the individual is, in fact, a member of a targeted group before claiming the WOTC with respect to the individual.

The IRS on September 26, 1996, issued Form 8850, *Work Opportunity Credit Pre-Screening Notice and Certification Request*, to serve as the pre-screening notice. This Form will be available electronically beginning September 27, 1996, through the IRS Home Page on the World Wide Web (http://www.irs.ustreas.gov) or by modem directly to 703–321–8020 (not a toll-free number). Employers may also request copies of Form 8850 by calling 1–800–TAX–FORM (1–800–829–3676); however, copies of Form 8850 will not be available through this toll-free service until approximately October 15, 1996.

TEMPORARY TRANSITION RELIEF

This Notice provides temporary transition relief for employers that did not complete Form 8850 at the time a job offer was made if the following conditions are satisfied:

(1) The job offer was made on or after August 20, 1996, and on or before October 31, 1996.

(2) At the time the job offer was made, the employer reasonably believed, based on information provided by the prospective employee, that the individual was a member of a targeted group.

(3) Form 8850 is properly completed and signed by both the employer and the individual, and submitted to the SESA, by the later of (a) November 21, 1996, or (b) 21 days after the individual begins work for the employer.

An employer seeking to rely on the temporary transition relief provided by this Notice should write ''FILED PURSUANT TO NOTICE 96–52'' across the top of the Form 8850. The employer should also strike the words ''I completed this form on or before the day a job was offered to the applicant and that'' from the jurat preceding the signature line of the form.

If these conditions are satisfied, the Service will treat the Form 8850 as having been timely completed and submitted to the SESA in accordance with Code section 51(d)(11)(A)(ii). The

SESA must, however, certify that the individual named in the form is, in fact, a member of a targeted group before the employer may claim the WOTC with respect to the individual.

Drafting Information

The principal author of this Notice is Robert Wheeler of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this Notice, contact Mr. Wheeler on (202) 622–6060 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Application of the Grantor Trust Rules to Nonexempt Employees' Trusts

REG–209826–96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the application of the grantor trust rules to nonexempt employees' trusts. The proposed regulations clarify that the grantor trust rules generally do not apply to domestic nonexempt employees' trusts, and clarify the interaction between the grantor trust rules, the rules generally governing the taxation of nonqualified deferred compensation arrangements, and the antideferral rules for United States persons holding interests in foreign entities. The proposed regulations affect nonexempt employees' trusts funding deferred compensation arrangements, as well as U.S. persons holding interests in certain foreign corporations and foreign partnerships with deferred compensation arrangements funded through foreign nonexempt employees' trusts. In addition, the proposed regulations affect U.S. persons that have deferred compensation arrangements funded through certain foreign nonexempt employees' trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by December 26, 1996. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for January 15, 1997, at 10:00 a.m. must be submitted by December 24, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209826–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG– 209826–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622–3060; Linda S. F. Marshall, (202) 622– 6030; Kristine K. Schlaman (202) 622–3840; and M. Grace Fleeman (202) 622–3850; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by November 26, 1996. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.671–1(h)(3)(iii). This information is required by the IRS to determine accurately the portion of certain foreign employees' trusts properly treated as owned by the employer. This information will be used to notify the Commissioner that certain entities are relying on an exception for reasonable funding. The collection of information is mandatory. The likely respondents are businesses or other for-profit organizations.

Estimated total annual reporting burden: **1,000 hours.**

The estimated annual burden per respondent varies from **.5 hours** to **1.5 hours**, depending on individual circumstances, with an estimated average of **1 hour.**

Estimated number of respondents: **1,000.**

Estimated annual frequency of responses: **On occasion.**

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On May 7, 1993, the IRS issued proposed regulations under section 404A (58 FR 27219). The section 404A proposed regulations provide that section 404A is the exclusive means by which an employer may take a deduction or reduce earnings and profits for amounts used to fund deferred compensation in situations other than those in which a deduction or reduction of earnings and profits is permitted under section 404 (the "exclusive means" rule).

The section 404A proposed regulations do not provide rules regarding the treatment of income and ownership of assets of foreign trusts established to fund deferred compensation arrangements, but refer to "other applicable provisions,'' including the grantor trust rules of subpart E of the Internal Revenue Code of 1986, as amended. Thus, the 1993 proposed section 404A regulations imply that, if an employer cannot or does not elect section 404A treatment for a foreign trust established to fund the employer's deferred compensation arrangements, the employer may be treated as the owner of the entire trust for purposes of subtitle A of the Code under sections 671 through 679 even though all or part of the trust assets are set aside for purposes of satisfying liabilities under the plan. Conversely, some commentators believe that, for U.S. tax purposes, a foreign employer would not be treated as the owner of any portion of a foreign trust established to fund a section 404A qualified foreign plan even though all or part of the trust assets might be used for purposes other than satisfying liabilities under the plan. A number of different rules, in addition to the grantor trust rules, potentially affect the taxation of foreign trusts established to fund deferred compensation arrangements. These rules include: the nonexempt deferred compensation trust rules of sections 402(b) and 404(a)(5); the partnership rules of subchapter K; and the antideferral rules, which include subpart F and the passive foreign investment company (PFIC) rules (sections 1291 through 1297).

Following publication of the proposed 1993 regulations and enactment of section 956A in August of 1993, comments were received concerning both the asset ownership rules for foreign employees' trusts and the ''exclusive means'' rule for deductions or reductions in earnings and profits. These proposed regulations address only comments concerning income and asset ownership rules for foreign employees' trusts for federal income tax purposes. A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31). Comments concerning the ''exclusive means'' rule will be addressed in future regulations.

Statutory Background

1. Transfers of Property Not Complete for Tax Purposes

In certain situations, assets that are owned by a trust as a legal matter may be treated as owned by another person for tax purposes. Thus, assets may be treated as owned by a pension trust for non-tax legal purposes but not for tax purposes. This occurs, for example, if the person who has purportedly transferred assets to the trust retains the benefits and burdens of ownership. *See, e.g., Frank Lyon Co. v. United States*, 435 U.S. 561 (1978); *Corliss v. Bowers*, 281 U.S. 376 (1930); *Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221 (1981); Rev. Proc. 75–21 (1975–1 C.B. 715). If, under these principles, no assets have been transferred to an employees' trust for federal tax purposes, these proposed regulations do not apply.

2. Subpart E—Grantors and others treated as substantial owners

Even if there has been a completed transfer of trust assets, the subpart E rules may apply to treat the grantor as the owner of a portion of the trust for federal income tax purposes. Subpart E of part I of subchapter J, chapter 1 of the Code (sections 671 through 679) taxes income of a trust to the grantor or another person notwithstanding that the grantor or other person may not be a beneficiary of the trust. Under section 671, a grantor or another person includes in computing taxable income and credits those items of income, deduction, and credit against tax that are attributable to or included in any portion of a trust of which that person is treated as the owner.

Sections 673 through 679 set forth the rules for determining when the grantor or another person is treated as the owner of a portion of a trust for federal income tax purposes. Under sections 673 through 678, the grantor trust rules apply only if the grantor or other person has certain powers or interests. For example, section 676 provides that the grantor is treated as the owner of a portion of a trust where, at any time, the power to revest in the grantor title to that portion is exercisable by the grantor or a nonadverse party, or both. A grantor who is the owner of a trust under subpart E is treated as the owner of the trust property for federal income tax purposes. See Rev. Rul. 85–13 (1985–1 C.B. 184). This document is made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Section 679 generally applies to a U.S. person who directly or indirectly transfers property to a foreign trust, subject to certain exceptions described below. Section 679 generally treats a U.S. person transferring property to a foreign trust as the owner of the portion of the trust attributable to the transferred property for any taxable year of that person for which there is a U.S. beneficiary of any portion of the trust. In general, a trust is treated as having a U.S. beneficiary for a taxable year of the U.S. transferor unless, under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a U.S. person, and unless no part of the income or corpus of the trust could be paid to or for the benefit of a U.S. person if the trust were terminated at any time during the taxable year. A U.S. person is treated as having made an indirect transfer to the foreign trust of property if a non-U.S. person acts as a conduit with respect to the transfer or if the U.S. person has sufficient control over the non-U.S. person to direct the transfer by the non-U.S. person rather than itself.

Section 679(a) provides several exceptions from the application of section 679 for certain compensatory trusts. Under these exceptions, section 679 does not apply to a trust described in section 404(a)(4) or section 404A. Pursuant to amendments made in section 1903(b) of the Small Business Job Protection Act of 1996 (SBJPA), section 679 also does not apply to any transfer of property after February 6, 1995, to a trust described in section 402(b).

3. Taxability of beneficiary of nonexempt employees' trust

Section 402(b) provides rules for the taxability of beneficiaries of a nonexempt employees' trust. Under section 402(b)(1), employer contributions to a nonexempt employees' trust generally are included in the gross income of the employee in accordance with section 83. Section 402(b)(2) provides that amounts distributed or made available from a nonexempt employees' trust generally are taxable to the distributee under the rules of section 72 in the taxable year in which distributed or made available. Section 402(b)(4) provides that, under certain circumstances, a highly compensated employee is taxed each year on the employee's vested accrued benefit (other than the employee's investment in the contract) in a nonexempt employees' trust. Under section 402(b)(3), a beneficiary of a nonexempt employees' trust generally is not treated as the owner of any portion of the trust under subpart E. The rules of section 402(b) apply to a beneficiary of a nonexempt employees' trust regardless of whether the trust is a domestic trust or a foreign trust.

4. Employer deduction for contributions to a nonexempt employees' trust

Section 404(a)(5) provides rules regarding the deductibility of contributions to a nonqualified deferred compensation plan. Under section 404(a)(5), any contribution paid by an employer under a deferred compensation plan, if otherwise deductible under chapter 1 of the Code, is deductible only in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, and only if separate accounts are maintained for each employee. Section 1.404(a)–12(b)(1) clarifies that an employer's deduction for contributions to a nonexempt employees' trust is restricted to the amount of the contribution, and excludes any income received by the trust with respect to contributed amounts.

5. The partnership rules of subchapter K

A partnership is not subject to income taxation. However, a partner must take into account separately on its return its distributive share of the partnership's income, gain, loss, deduction, or credit. A U.S. partner of a foreign partnership is subject to U.S. tax on its distributive share of partnership income. In addition, a foreign partnership may have a controlled foreign corporation (CFC) partner which must take into account its distributive share of partnership income, gain, loss, or deduction in determining its taxable income. These distributive share inclusions of the CFC may result in subpart F income and thus income to a U.S. shareholder of the CFC. If the grantor trust rules do not apply to any portion of a foreign employees' trust, a foreign partnership could fund a foreign employees' trust in excess of the amount needed to meet its obligations to its employees under its deferred compensation plan and yet retain control over the excess amount. As a result, the foreign partnership would not have to include items in taxable income attributable to the excess amount, and consequently the U.S. partner or CFC would not have to include those items in its income.

6. The antideferral rules of subpart F, including section 956A, and PFIC

A U.S. person that owns stock in a foreign corporation generally pays no U.S. tax currently on income earned by the foreign corporation. Instead, the United States defers taxation of that income until it is distributed to the U.S. person. The antideferral rules, however, which include subpart F and the PFIC rules, limit this deferral in certain situations.

Subpart F of part III of Subchapter N (sections 951 through 964) applies to CFCs. A foreign corporation is a CFC if more than 50 percent of the total voting power of all classes of stock entitled to vote, or the total value of the stock in the corporation, is owned by "U.S. shareholders" (defined as U.S. persons who own ten percent or more of the voting power of all classes of stock entitled to vote) on any day during the foreign corporation's taxable year. The United States generally taxes U.S. shareholders of the CFC currently on their pro rata share of the CFC's subpart F income and sections 956 and 956A amounts. In effect, the U.S. shareholders are treated as having received a distribution out of the earnings and profits (E&P) of the CFC.

The types of income earned by a foreign employees' trust (dividends, interest, income equivalent to interest, rents and royalties, and annuities) are generally subpart F income. The inclusion under section 956 is based on the CFC's investment in U.S. property, which generally includes stock of a U.S. shareholder of the CFC. A U.S. shareholder's section 956A amount for a taxable year is the lesser of two amounts. The first amount is the excess of the U.S. shareholder's pro rata share of the CFC's "excess passive assets" over the portion of the CFC's E&P treated as previously included in gross income by the U.S. shareholder under section 956A. For purposes of section 956A, "passive asset" includes any asset which produces (or is held for the production of) passive income, and generally includes property that produces dividends, interest, income equivalent to interest, rents and royalties, and annuities, subject to exceptions that generally are not relevant in this context. The second amount is the U.S. shareholder's pro rata share of the CFC's "applicable earnings" to the extent accumulated in taxable years beginning after September 30, 1993.

Section 1501(a)(2) of SBJPA repeals section 956A. The repeal is effective for taxable years of foreign corporations beginning after December 31, 1996, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

If a CFC employer is not treated for federal income tax purposes as the owner of any portion of a foreign employees' trust under the grantor trust rules, then to the extent that passive assets contributed by a CFC to a nonexempt employees' trust would otherwise result in subpart F consequences for the CFC and its shareholders, the CFC's contribution could allow those consequences to be avoided. For example, a contribution by a CFC of passive assets to its foreign employees' trust could reduce the CFC's subpart F earnings and profits, and its applicable earnings or passive assets for section 956A purposes, and could affect the CFC's increase in investment in U.S. property for purposes of section 956, all of which could affect a U.S. shareholder's pro rata subpart F inclusions for the taxable year.

In contrast to the subpart F rules, the PFIC rules apply to any U.S. person who directly or indirectly owns any stock in a foreign corporation that is a PFIC under either an income or asset test. A foreign corporation, including a CFC, is a PFIC if either (1) 75 percent or more of its gross income for the taxable year is passive income or (2) at least 50 percent of the value of the corporation's assets produce passive income or are held for the production of passive income. For this purpose, passive income generally is the same type of income (dividends, interest, income equivalent to interest, rents and royalties, and annuities) that would be earned by a foreign employees' trust.

Under the PFIC rules, a U.S. person who is a direct or indirect shareholder of a PFIC is subject to a special tax regime upon either disposition of the PFIC's stock or receipt of certain distributions (excess distributions) from the PFIC. A shareholder, however, may avoid the application of this special regime by electing to include its pro rata share of certain of the PFIC's passive income in the year in which the foreign corporation earns it.

If the grantor trust rules did not apply to any portion of a foreign employees' trust, a contribution by a foreign corporation of passive assets to a nonexempt employees' trust would enable a U.S. person to avoid the PFIC rules if those assets would otherwise generate PFIC consequences for the foreign corporation and its shareholders. For example, by transferring passive assets to its nonexempt employees' trust in excess of the amount needed to meet obligations to its employees under its deferred compensation plan while retaining control over the excess amount, a foreign corporation could divest itself of a sufficient amount of passive assets and the passive income they produce to avoid meeting the income and asset tests. Furthermore, a foreign corporation that is a PFIC could minimize income inclusions for a U.S. shareholder that has made an election to include PFIC income currently by transferring income-producing assets to a foreign employees' trust.

Overview of proposed regulations

Under the proposed regulations, an employer is not treated as an owner of any portion of a domestic nonexempt employees' trust described in section 402(b) for federal income tax purposes. Section 404(a)(5) and § 1.404(a)–12(b) provide a deduction to the employer solely for contributions to a nonexempt employees' trust, and not for any income of the trust. This rule is inconsistent with treating the employer as owning any portion of a nonexempt employees' trust, which would require the employer to recognize the trust's income that it may not deduct under section 404(a)(5). Accordingly, such a trust is treated as a separate taxable trust that is taxed under the rules of section 641 et seq. The rule in the proposed regulations is consistent with the holdings of a number of private letter rulings with respect to nonexempt employees' trusts and with the Service's treatment of trusts that no longer qualify as exempt under 501(a) (because they are no longer described in section 401(a)) as separate taxable trusts rather than as grantor trusts. See also Rev. Rul. 74–299 (1974–1 C.B. 154). This document is made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Under the proposed regulations, an employer generally is not treated as the owner of any portion of a foreign nonexempt employees' trust for federal income tax purposes, except as provided under section 679. The proposed regulations, however, also provide that the grantor trust rules apply to determine whether an employer that is a CFC or a U.S. employer is treated as the owner of a specified ''fractional interest'' in a foreign employees' trust. This rule applies whether or not the employer elects section 404A treatment for the trust. Under the proposed regulations, this rule also applies in the case of an employer that is a foreign partnership with one or more partners that are U.S. persons or CFCs (U.S.-related partnership). Such an employer is treated as the owner of a portion of a foreign employees' trust under these proposed regulations only if the employer retains a grantor trust power or interest over a foreign employees' trust and has a specified ''fractional interest'' in the trust.

Under these proposed regulations, the grantor trust rules of subpart E do not apply to a foreign employees' trust with respect to a foreign employer other than a CFC or a U.S.-related foreign partnership, except for cases in which assets are transferred to a foreign employees' trust with a principal purpose of avoiding the PFIC rules. The IRS and Treasury will continue to consider whether these regulations should provide additional antiabuse rules that may be necessary for other purposes, including for purposes of calculating earnings and profits, determining the foreign tax credit limitation, and applying the interest allocation rules of § 1.882–5.

Explanation of provisions

1. § 1.671–1(g): Domestic nonexempt employees' trusts

The proposed regulations provide that an employer is not treated for federal income tax purposes as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust. This rule is analogous to the rule set forth in § 1.641(a)–0, which provides that subchapter J, including the grantor trust rules, does not apply to tax-exempt employees' trusts.

2. § 1.671–1(h): Subpart E rules for certain foreign employees' trusts

The proposed regulations provide Subpart E rules for foreign employees' trusts of CFCs, foreign partnerships, and U.S. employers that apply for all federal income tax purposes. Under the proposed regulations, except as provided under section 679 or the proposed regulations (as described below), an employer is not treated as an owner of any portion of a foreign employees' trust for federal income tax purposes. If an employer is treated as the owner of a portion of a foreign employees' trust for federal income tax purposes as described below, then the employer is considered to own the trust assets attributable to that portion of the trust for all federal income tax purposes. Thus, for example, if an employer is treated as the owner of a portion of a foreign employees' trust for federal income tax purposes as described below, then income of the trust that is attributable to that portion of the trust increases the employer's earnings and profits for purposes of sections 312 and 964.

A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31). The proposed regulations apply to any foreign employees' trust of a CFC or U.S.-related foreign partnership, whether or not a trust funds a qualified foreign plan (as defined in section 404A(e)). The proposed regulations clarify that the income inclusion and asset ownership rules apply to the entity whose employees or independent contractors are covered under the deferred compensation plan.

A. Plan of CFC employer

The proposed regulations provide that, if a CFC maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the CFC, the provisions of subpart E apply to the portion of the trust that is the fractional interest of the trust described in the proposed regulations.

B. Plan of U.S. employer

The proposed regulations provide that if a U.S. person maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S. person, the provisions of subpart E apply to the portion of the trust that is the fractional interest of the trust described in the proposed regulations.

C. Plan of U.S.-related foreign partnership employer

The proposed regulations provide that, if a U.S.-related foreign partnership maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S.-related foreign partnership, the provisions of subpart E apply to the portion of the trust that is the fractional interest of the trust described in the proposed regulations. The IRS and Treasury solicit comments on whether these regulations should provide a safe harbor rule for a U.S.-related foreign partnership that maintains a deferred compensation plan funded through a foreign employees' trust if U.S. or CFC partnership interests are de minimis. The IRS and Treasury specifically solicit comments concerning the amount of U.S. or CFC partnership interests that would qualify as ''de minimis.''

D. Plan of non-CFC foreign employer

The proposed regulations provide that a foreign employer that is not a CFC is treated as an owner of a portion of a foreign employees' trust only as provided in the antiabuse rule of § 1.1297–4.

E. Fractional interest

The fractional interest of a foreign employees' trust described above is defined in the proposed regulations as an undivided fractional interest in the trust for which the fraction is equal to the relevant amount determined for the employer's taxable year divided by the fair market value of trust assets determined for the employer's taxable year.

F. Relevant amount

The relevant amount for the employer's taxable year is defined in the proposed regulations as the amount, if any, by which the fair market value of trust assets, plus the fair market value of any assets available to pay plan liabilities (including any amount held under an annuity contract that exceeds the amount that is needed to satisfy the liabilities provided for under the contract) that are held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), exceed the plan's accrued liability, determined using a projected unit credit funding method.

The relevant amount is reduced to the extent the taxpayer demonstrates to the Commissioner that the relevant amount is attributable to amounts that were properly contributed to the trust pursuant to a reasonable funding method, or experience that is favorable relative to any actuarial assumptions used that the Commissioner determines to be reasonable. In addition, if an employer that is a controlled foreign corporation otherwise would be treated as the owner of a fractional interest in a foreign employees' trust, the taxpayer may rely on this rule only if it so indicates on a statement attached to a timely filed Form 5471. The IRS and Treasury solicit comments regarding the most appropriate way in which to extend a filing requirement to partners in U.S.-related foreign partnerships and other affected taxpayers.

G. Plan's accrued liability

Under the proposed regulations, the plan's accrued liability for a taxable year of the employer is computed as of the plan's measurement date for the employer's taxable year. The plan's accrued liability is determined using a projected unit credit funding method, taking into account only liabilities relating to services performed for the employer or a predecessor employer. In addition, the plan's accrued liability is reduced (but not below zero) by any liabilities that are provided for under annuity contracts held to satisfy plan liabilities.

Because CFCs generally are required to determine their taxable income by reference to U.S. tax principles, the definition of a plan's ''accrued liability'' refers to § 1.412(c)(3)–1. This definition generally is intended to track the method used for calculating pension costs under Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pensions (FAS 87), available from the Financial Accounting Standards Board, 401 Merritt 7, Norwalk, CT 06856. Under the method required to be used to calculate FAS 87's projected benefit obligation (PBO), plan costs are based on projected salary levels. Because many taxpayers already compute PBO annually to determine the pension costs of their nonexempt employees' trusts for financial reporting, the timing, interval and method to compute plan liabilities under § 1.671–1(h) should minimize taxpayer burden. The IRS and Treasury solicit comments regarding the extent to which the proposed regulations conform to existing procedures under FAS 87 and applicable foreign law, and regarding appropriate conforming adjustments.

H. Fair market value of trust assets

Under the proposed regulations, for a taxable year of the employer, the fair market value of trust assets, and the fair market value of retirement annuities or other assets held in the equivalent of a trust, equals the fair market value of those assets, as of the measurement date for the employer's taxable year. The fair market value of these assets is adjusted to include contributions made between the measurement date and the end of the employer's taxable year.

I. De minimis exception

The proposed regulations provide an exception to the general rule for determining the relevant amount. If the relevant amount would not otherwise be greater than the plan's normal cost for the plan year ending with or within the employer's taxable year, then the relevant amount is considered to be zero.

J. Proposed effective date and transition rules

The proposed regulations are proposed to be prospective. For taxable years ending prior to September 27, 1996, employers generally would not be treated for federal income tax purposes as owning the assets of foreign nonexempt employees' trusts (except as provided under section 679), consistent with the rules applying to domestic nonexempt employees' trusts. A transition rule, for purposes of § 1.671–1(h), exempts certain amounts from the application of the proposed regulations. This exemption is phased out over a ten-year period. There is a special transition rule for any foreign corporation that becomes a CFC after September 27, 1996. In addition, there is a special transition rule for certain entities that become U.S.-related foreign partnerships after September 27, 1996.

3. § 1.671–2: General asset ownership rules

The proposed regulations provide that a person who is treated as the owner of any portion of a trust under subpart E is considered to own the trust assets attributable to that portion of the trust for all federal income tax purposes.

4. § 1.1297–4: Subpart E rules for foreign employers that are not controlled foreign corporations

Under the proposed regulations, a foreign employer other than a CFC is not treated as the owner of any portion of a foreign nonexempt employees' trust for purposes of sections 1291 through 1297, except for cases in which a principal purpose for transferring property to the trust is to avoid classification of a foreign corporation as a PFIC (as defined in section 1296) or, if the foreign corporation is classified as a PFIC, in cases in which a principal purpose for transferring property to the trust is to avoid or to reduce taxation of U.S. shareholders of the PFIC under section 1291 or 1293. The effective date of this rule is September 27, 1996.

Income inclusion and related asset ownership rules for foreign welfare benefit plans

The IRS and Treasury solicit comments on the need for (and content of) income inclusion and asset ownership rules for foreign welfare benefit trusts.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect U.S. owners of significant interests in foreign entities, which owners generally are large multinational corporations. This certification is also based on the fact that the burden imposed by the collection of information in the regulation, which is a requirement that certain entities may rely on an exception for reasonable funding only if they indicate such reliance on a statement attached to a timely filed Form 5471, is minimal, and, therefore, the collection of information will not impose a significant economic impact on such entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 15, 1997, at 10:00 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by December 26, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 24, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Linda S. F. Marshall of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), and Kristine K. Schlaman and M. Grace Fleeman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for sections 1.1291–10T, 1.1294–1T, 1.1295–1T, and 1.1297–3T and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.671–1 also issued under 26 U.S.C. 404A(h) and 672(f)(2)(B). * * *

Section 1.1291–10T also issued under 26 U.S.C. 1291(d)(2).

Section 1.1294–1T also issued under 26 U.S.C. 1294.

Section 1.1295–1T also issued under 26 U.S.C. 1295.

Section 1.1297–3T also issued under 26 U.S.C. 1297(b)(1).

Section 1.1297–4 also issued under 26 U.S.C. 1297(f). * * *

Par. 2. Section 1.671–1 is amended by adding paragraphs (g) and (h) to read as follows:

§ 1.671–1 Grantors and others treated as substantial owners; scope.

* * * * *

(g) *Domestic nonexempt employees' trust*—(1) *General rule.* An employer is not treated as an owner of any portion of a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust. See section 402(b)(3) and § 1.402(b)–1(b)(6) for rules relating to treatment of a beneficiary of a nonexempt employees' trust as the owner of a portion of the trust.

(2) *Example.* The following example illustrates the rules of paragraph (g)(1) of this section:

Example. Employer X provides nonqualified deferred compensation through Plan A to certain of its management employees. Employer X has created Trust T to fund the benefits under Plan A. Assets of Trust T may not be used for any purpose other than to satisfy benefits provided under Plan A until all plan liabilities have been satisfied. Trust T is classified as a trust under § 301.7701–4 of this chapter, and is not a foreign trust within the meaning of section 7701(a)(31). Under § 1.83– 3(e), contributions to Trust T are considered transfers of property to participants within the meaning of section 83. On these facts, Trust T is a nonexempt employees' trust described in section 402(b). Because Trust T is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is not a foreign trust within the meaning of section 7701(a)(31), Employer X is not treated as an owner of any portion of Trust T.

(h) *Foreign employees' trust*—(1) *General rules.* Except as provided under section 679 or as provided under this paragraph (h)(1), an employer is not treated as an owner of any portion of a foreign employees' trust (as defined in paragraph (h)(2) of this section), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust.

(i) *Plan of CFC employer.* If a controlled foreign corporation (as defined in section 957) maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the controlled foreign corporation, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(ii) *Plan of U.S. employer.* If a United States person (as defined in section 7701(a)(30)) maintains a deferred compensation plan that is funded through a foreign employees' trust, then, with respect to the U.S. person, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(iii) *Plan of U.S.-related foreign partnership employer*— (A) *General rule.* If a U.S.-related foreign partnership (as defined in paragraph (h)(1)(iii)(B) of this section) maintains a deferred compensation plan funded through a foreign employees' trust, then, with respect to the U.S.-related foreign partnership, the provisions of subpart E apply to the portion of the trust that is the fractional interest described in paragraph (h)(3) of this section.

(B) *U.S.-related foreign partnership.* For purposes of this paragraph (h), a U.S.-related foreign partnership is a foreign partnership in which a U.S. person or a controlled foreign corporation owns a partnership interest either directly or indirectly through one or more partnerships.

(iv) *Application of § 1.1297–4 to plan of foreign non-CFC employer.* A foreign employer that is not a controlled foreign corporation may be treated as an owner of a portion of a foreign employees' trust as provided in § 1.1297–4.

(v) *Application to employer entity.* The rules of paragraphs (h)(1)(i) through (h)(1)(iv) of this section apply to the employer whose employees benefit under the deferred compensation plan funded through a foreign employees' trust, or, in the case of a deferred compensation plan covering independent contractors, the recipient of services performed by those independent contractors, regardless of whether the plan is maintained through another entity. Thus, for example, where a deferred compensation plan benefitting employees of a controlled foreign corporation is funded through a foreign employees' trust, the controlled foreign corporation is considered to be the grantor of the foreign employees' trust for purposes of applying paragraph (h)(1)(i) of this section.

(2) *Foreign employees' trust.* A foreign employees' trust is a nonexempt employees' trust described in section 402(b) that is part of a deferred compensation plan, and that is a foreign trust within the meaning of section 7701(a)(31).

(3) *Fractional interest for paragraph (h)(1)*—(i) *In general.* The fractional interest for a foreign employees' trust used for purposes of paragraph (h)(1) of this section for a taxable year of the employer is an undivided fractional interest in the trust for which the fraction is equal to the relevant amount for the employer's taxable year divided by the fair market value of trust assets for the employer's taxable year.

(ii) *Relevant amount*—(A) *In general.* For purposes of applying paragraph (h)(3)(i) of this section, and except as provided in paragraph (h)(3)(iii) of this section, the relevant amount for the employer's taxable year is the amount, if any, by which the fair market value of trust assets, plus the fair market value of any assets available to pay plan liabilities that are held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), exceed the plan's accrued liability. The following rules apply for this purpose:

(*1*) The plan's accrued liability is determined using a projected unit credit funding method that satisfies the requirements of § 1.412(c)(3)–1, taking into account only liabilities relating to services performed through the measurement date for the employer or a predecessor employer.

(*2*) The plan's accrued liability is reduced (but not below zero) by any liabilities that are provided for under annuity contracts held to satisfy plan liabilities.

(*3*) Any amount held under an annuity contract that exceeds the amount that is needed to satisfy the liabilities provided for under the contract (e.g., the value of a participation right under a participating annuity contract) is added to the fair market value of any assets available to pay plan liabilities that are held in the equivalent of a trust.

(*4*) If the relevant amount as determined under this paragraph (h)(3)(ii), without regard to this paragraph (h)(3)(ii)(A)(4), is greater than the fair market value of trust assets, then the relevant amount is equal to the fair market value of trust assets.

(B) *Permissible actuarial assumptions for accrued liability.* For purposes of paragraph (h)(3)(ii)(A) of this section, a plan's accrued liability must be calculated using an interest rate and other actuarial assumptions that the Commissioner determines to be reasonable. It is appropriate in determining this interest rate to look to available information about rates implicit in current prices of annuity contracts, and to look to rates of return on high-quality fixed-income investments currently available and expected to be available during the period prior to maturity of the plan benefits. If the qualified business unit computes its income or earnings and profits in dollars pursuant to the dollar approximate separate transactions method under § 1.985–3, the employer must use an exchange rate that can be demonstrated to clearly reflect income, based on all relevant facts and circumstances, including appropriate rates of inflation and commercial practices.

(iii) *Exception for reasonable funding.* The relevant amount does not include an amount that the taxpayer demonstrates to the Commissioner is attributable to amounts that were properly contributed to the trust pursuant to a reasonable funding method, applied using actuarial assumptions that the Commissioner determines to be reasonable, or any amount that the taxpayer demonstrates to the Commissioner is attributable to experience that is favorable relative to any actuarial assumptions used that the Commissioner determines to be reasonable. For this paragraph (h)(3)(iii) to apply to a controlled foreign corporation employer described in paragraph (h)(1)(i) of this section, the taxpayer must indicate on a statement attached to a timely filed Form 5471 that the taxpayer is relying on this rule. For purposes of this paragraph (h)(3)(iii), an amount is considered contributed pursuant to a reasonable funding method if the amount is contributed pursuant to a funding method permitted to be used under section 412 (e.g., the entry age normal funding method) that is consistently used to determine plan contributions. In addition, for purposes of this paragraph (h)(3)(iii), if there has been a change to that method from another funding method, an amount is considered contributed pursuant to a reasonable funding method only if the prior funding method is also a funding method described in the preceding sentence that was consistently used to determine plan contributions. For purposes of this paragraph (h)(3)(iii), a funding method is considered reasonable only if the method provides for any initial unfunded liability to be amortized over a period of at least 6 years, and for any net change in accrued liability resulting from a change in funding method to be amortized over a period of at least 6 years.

(iv) *Reduction for transition amount.* The relevant amount is reduced (but not below zero) by any transition amount described in paragraphs (h)(5), (h)(6), or (h)(7) of this section.

(v) *Fair market value of assets.* For purposes of paragraphs (h)(3)(i) and (ii) of this section, for a taxable year of the employer, the fair market value of trust assets, and the fair market value of other assets held in the equivalent of a trust within the meaning of section 404A(b)(5)(A), equals the fair market value of those assets, as of the measurement date for the employer's taxable year, adjusted to include contributions made after the measurement date and by the end of the employer's taxable year.

(vi) *Annual valuation.* For purposes of determining the relevant amount for a taxable year of the employer, the fair market value of plan assets, and the plan's accrued liability as described in paragraphs (h)(3)(ii) and (iii) of this section, and the normal cost as described in paragraph (h)(4) of this section, must be determined as of a consistently used annual measurement date within the employer's taxable year.

(vii) *Special rule for plan funded through multiple trusts.* In cases in which a plan is funded through more than one foreign employees' trust, the fractional interest determined under paragraph (h)(3)(i) of this section in each trust is determined by treating all of the trusts as if their assets were held in a single trust for which the fraction is determined in accordance with the rules of this paragraph (h)(3).

(4) *De minimis exception.* If the relevant amount is not greater than the plan's normal cost for the plan year ending with or within the employer's taxable year, computed using a funding method and actuarial assumptions as described in paragraph (h)(3)(ii) of this section or as described in paragraph (h)(3)(iii) of this section if the requirements of that paragraph are met, that are used to determine plan contributions, then the relevant amount is considered to be zero for purposes of applying paragraph (h)(3)(i) of this section.

(5) *General rule for transition amount*—(i) *General rule.* If paragraphs (h)(6) and (h)(7) of this section do not apply to the employer, the transition amount for purposes of paragraph (h)(3)(iv) of this section is equal to the preexisting amount multiplied by the applicable percentage for the year in which the employer's taxable year begins.

(ii) *Preexisting amount.* The preexisting amount is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section, computed as of the measurement date that immediately precedes September 27, 1996, disregarding contributions to the trust made after the measurement date.

(iii) *Applicable percentage.* The applicable percentage is equal to 100 percent for the employer's first taxable year ending after this document is published as a final regulation in the **Federal Register** and prior taxable years of the employer, and is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the employer.

(6) *Transition amount for new CFCs*—(i) *General rule.* In the case of a new controlled foreign corporation employer, the transition amount for purposes of paragraph (h)(3)(iv) is equal to the pre-change amount multiplied by the applicable percentage for the year in which the new controlled foreign corporation employer's taxable year begins.

(ii) *Pre-change amount.* The pre-change amount for purposes of paragraph (h)(6)(i) is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section and disregarding contributions to the trust made after the measurement date, for the new controlled foreign corporation employer's last taxable year ending before the corporation becomes a new controlled foreign corporation employer.

(iii) *Applicable percentage*—(A) *General rule.* Except as provided in paragraph (h)(6)(iii)(B) of this section, the applicable percentage is equal to 100 percent for a new controlled foreign corporation employer's first taxable year ending after the corporation becomes a controlled foreign corporation. The applicable percentage is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the new controlled foreign corporation.

(B) *Interim rule.* For any taxable year of a new controlled foreign corporation employer that ends on or before the date this document is published as a final regulation in the **Federal Register**, the applicable percentage is equal to 100 percent. The applicable percentage is reduced by 10 percentage points for each subsequent taxable year of the new controlled foreign corporation employer that ends after the date this document is published as a final regulation in the **Federal Register.**

(iv) *New CFC employer.* For purposes of paragraph (h)(6) of this section, a new controlled foreign corporation employer is a corporation that first becomes a controlled foreign corporation within the meaning of section 957 after September 27, 1996. A new controlled foreign corporation employer includes a corporation that was a controlled foreign corporation prior to, but not on, September 27, 1996, and that first becomes a controlled foreign corporation again after September 27, 1996.

(v) *Anti-stuffing rule.* Notwithstanding paragraph (h)(6)(iii) of this section, if, prior to becoming a controlled foreign corporation, a corporation contributes amounts to a foreign employees' trust with a principal purpose of obtaining tax benefits by increasing the pre-change amount, the applicable percentage with respect to those amounts is 0 percent for all taxable years of the new controlled foreign corporation employer.

(7) *Transition amount for new U.S.-related foreign partnerships*—(i) *General rule.* In the case of a new U.S.-related foreign partnership employer, the transition amount for purposes of paragraph (h)(3)(iv) of this section is equal to the pre-change amount multiplied by the applicable percentage for the year in which the new U.S.-related foreign partnership employer's taxable year begins.

(ii) *Pre-change amount.* The pre-change amount for purposes of paragraph (h)(7)(i) of this section is equal to the relevant amount of the trust, determined without regard to paragraphs (h)(3)(iv) and (h)(4) of this section and disregarding contributions to the trust made after the measurement date, for the entity's last taxable year ending before the entity becomes a new U.S.-related foreign partnership employer.

(iii) *Applicable percentage*—(A) *General rule.* Except as provided in paragraph (h)(7)(iii)(B) of this section, the applicable percentage is equal to 100 percent for a new U.S.- related foreign partnership employer's first taxable year ending after the entity becomes a new U.S.-related foreign partnership employer. The applicable percentage is reduced (but not below zero) by 10 percentage points for each subsequent taxable year of the new U.S.-related foreign partnership employer.

(B) *Interim rule.* For any taxable year of a new U.S.- related foreign partnership employer that ends on or before the date this document is published as a final regulation in the **Federal Register**, the applicable percentage is equal to 100 percent. The applicable percentage is reduced by 10 percentage points for each subsequent taxable year of the new U.S.-related foreign partnership employer that ends after the date this document is published as a final regulation in the **Federal Register.**

(iv) *New U.S.-related foreign partnership employer.* For purposes of paragraph (h)(7) of this section, a new U.S.-related foreign partnership employer is an entity that was a foreign corporation other than a controlled foreign corporation, or that was a foreign partnership other than a U.S.-related foreign partnership, and that changes from this status to a U.S.-related foreign partnership after September 27, 1996. A new U.S.-related foreign partnership employer includes a corporation that was a U.S.-related foreign partnership prior to, but not on, September 27, 1996, and that first becomes a U.S.-related foreign partnership again after September 27, 1996.

(v) *Anti-stuffing rule.* Notwithstanding paragraph (h)(7)(iii) of this section, if, prior to becoming a new U.S.- related foreign partnership employer, an entity contributes amounts to a foreign employees' trust with a principal purpose of obtaining tax benefits by increasing the pre-change amount, the applicable percentage with respect to those amounts is 0 percent for all taxable years of the new U.S.-related foreign partnership employer.

(8) *Examples*. The following examples illustrate the rules of paragraph (h) of this section. In each example, the employer has a power or interest described in sections 673 through 677 over the foreign employees' trust, and the monetary unit is the applicable functional currency (FC) determined in accordance with section 985(b) and the regulations thereunder.

Example 1. (i) Employer X is a controlled foreign corporation (as defined in section 957). Employer X maintains a defined benefit retirement plan for its employees. Employer X's taxable year is the calendar year. Trust T, a foreign employees' trust, is the sole funding vehicle for the plan. Both the plan year of the plan and the taxable year of Trust T are the calendar year.

(ii) As of December 31, 1997, Trust T's measurement date, the fair market value (as described in paragraph (h)(3)(iv) of this section) of Trust T's assets is FC 1,000,000, and the amount of the plan's accrued liability is FC 800,000, which includes a normal cost for 1997 of FC 50,000. The preexisting amount for Trust T is FC 40,000. Thus, the relevant amount for 1997 is FC 160,000 (which is greater than the plan's normal cost for the year). Employer X's shareholder does not indicate on a statement attached to a timely filed Form 5471 that any of the relevant amount qualifies for the exception described in paragraph (h)(3)(iii) of this section. Therefore, the fractional interest for Employer X's taxable year ending on December 31, 1997, is 16 percent. Employer X is treated as the owner for federal income tax purposes of an undivided 16 percent interest in each of Trust T's assets for the period from January 1, 1997 through December 31, 1997. Employer X must take into account a 16 percent pro rata share of each item of income, deduction or credit of Trust T during this period in computing its federal income tax liability.

Example 2. Assume the same facts as in *Example 1*, except that Employer X's shareholder indicates on a statement attached to a timely filed Form 5471 and can demonstrate to the satisfaction of the Commissioner that, in reliance on paragraph (h)(3)(iii) of this section, FC 100,000 of the fair market value of Trust T's assets is attributable to favorable experience relative to reasonable actuarial assumptions used. Accordingly, the relevant amount for 1997 is FC 60,000. Because the plan's normal cost for 1997 is less than FC 60,000, the de minimis exception of paragraph (h)(4) of this section does not apply. Therefore, the fractional interest for Employer X's taxable year ending on December 31, 1997, is 6 percent. Employer X is treated as the owner for federal income tax purposes of an undivided 6 percent interest in each of Trust T's assets for the period from January 1, 1997, through December 31, 1997. Employer X must take into account a 6 percent pro rata share of each item of income, deduction or credit of Trust T during this period in computing its federal income tax liability.

(9) *Effective date.* Paragraphs (g) and (h) of this section apply to taxable years of an employer ending after September 27, 1996.

Par. 3. Section 1.671–2 is amended by adding paragraph (f) to read as follows:

§ 1.671–2 Applicable principles

* * * * *

(f) For purposes of subtitle A of the Internal Revenue Code, a person that is treated as the owner of any portion of a trust under subpart E is considered to own the trust assets attributable to that portion of the trust.

Par. 4. Section 1.1297–4 is added to read as follows:

§ 1.1297–4 Application of subpart E of subchapter J with respect to foreign employees' trusts.

(a) *General rules.* For purposes of part VI of subchapter P, chapter 1 of the Code, a foreign employer that is not a controlled foreign corporation is not treated as the owner of any portion of a foreign employees' trust (as defined in § 1.671–1(h)(2)) except as provided in this paragraph (a), regardless of whether the employer has a power or interest described in sections 673 through 677 over any portion of the trust.

(1) *Principal purpose to avoid classification as a passive foreign investment company.* If a principal purpose for a transfer of property by any person to a foreign employees' trust (as defined in § 1.671–1(h)(2)) is to avoid classification of a foreign corporation as a passive foreign investment company, then the following rule applies. If the foreign employer has a power or interest described in sections 673 through 677 over the trust, then the grantor trust rules of subpart E of part I of subchapter J, chapter 1 of the Code will apply, for purposes of part VI of subchapter P, to a fixed dollar amount in the trust that is equal to the fair market value of the property that is transferred for the purpose of avoiding classification as a passive foreign investment company. Whether a principal purpose for a transfer is the avoidance of classification as a passive foreign investment company will be determined on the basis of all of the facts and circumstances, including whether the amount of assets held by the foreign employees' trust is reasonably related to the plan's anticipated liabilities, taking into account any local law and practice relating to proper funding levels.

(2) Principal purpose to reduce or eliminate taxation under section 1291 or 1293. If a principal purpose for a transfer of property by any person to a foreign employees' trust (as defined in § 1.671–1(h)(2)) is to reduce or eliminate taxation under section 1291 or 1293, then the following rule applies. If the foreign employer has a power or interest described in sections 673 through 677 over the trust, then the provisions of subpart E will apply, for purposes of part VI of subchapter P, to a fixed dollar amount in the trust that is equal to the fair market value of the property transferred for the purpose of reducing or eliminating taxation under section 1291 or 1293. Whether a principal purpose for a transfer is to reduce or eliminate taxation under section 1291 or 1293 will be determined on the basis of all the facts and circumstances, including whether the amount of assets held by the foreign employees' trust is reasonably related to the plan's anticipated liabilities, taking into account any local law and practice relating to proper funding levels.

(3) *Application to employer entity.* The rules of this section apply to the employer whose employees benefit under the deferred compensation plan funded through the foreign employees' trust, or, in the case of a deferred compensation plan covering independent contractors, the recipient of services performed by those independent contractors, regardless of whether the plan is maintained through another entity. Thus, for example, where a deferred compensation plan benefitting employees of a

foreign employer that is not a controlled foreign corporation is funded through a foreign employees' trust, the foreign employer is considered to be the grantor of the foreign employees' trust for purposes of this paragraph (a).

(b) *Effective date.* This section applies to taxable years of a foreign corporation ending after September 27, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on September 26, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 27, 1996, 61 F.R. 50778)

Proposed Tip Reporting Agreement for Use in the Hairstyling Industry

Announcement 96–105

SUMMARY

The Internal Revenue Service is considering expansion of its Market Segment Understanding (MSU) Program as a means to enhance tax compliance through taxpayer education and voluntary advance agreements instead of traditional audit techniques. This announcement solicits comments on a draft model MSU Agreement entitled Tip Reporting Alternative Commitment (Hairstyling Industry).

OVERVIEW

The Service developed its MSU Program in 1993 as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the Program envisions that the Service and taxpayers in particular market segments would work together to improve tax compliance in those areas through educational efforts and other collaborative approaches rather than through traditional audit techniques.

Since 1995, the Service has entered into Tip Reporting Alternative Commitment (TRAC) agreements with taxpayers in the food service industry. In general, these TRAC agreements involve an educational program for tipped employees and tip reporting procedures for cash and charged tips. The agreements also set forth an understanding that both the employer and employees who comply with the terms of the TRAC agreement will generally not be subject to challenge by the District Director. The decision to enter into a TRAC agreement is entirely optional on the part of the employer.

Taxpayers in the hairstyling industry have expressed interest in entering into a TRAC agreement with the Service. To ensure consistency in these agreements and provide an opportunity for public comment prior to expanding this aspect of the MSU Program, the Service has developed a draft form of TRAC agreement that could be used as a model for the hairstyling industry. This draft model Agreement is entitled "Tip Reporting Alternative Commitment (Hairstyling Industry)" and is attached to this announcement.

COMMENTS

Written comments must be received by December 14, 1996. Send submissions to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96–105), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96–105), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

DRAFTING INFORMATION

The principal author of this announcement is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this announcement, contact Kathy Mort, MSU program administrator, Office of Specialty Taxes, on (202) 376–0687 (not a toll-free call).

Draft release date: 10/15/96

TIP REPORTING ALTERNATIVE COMMITMENT (Hairstyling Industry)

between

Department of the Treasury-Internal Revenue Service

and

______________ [Name of Employer]

______________ (Taxpayer-Employer's name, address, and identifying number) ("Employer") and the ______________ District Director of Internal Revenue ("District Director") hereby agree to the following Tip Reporting Alternative Commitment ("TRAC").

The parties agree that the current law requirements for reporting cash and charged tips and for determining the Employer's liability for Federal Insurance Contribution Act ("FICA") taxes with respect to those tips operate as described below:

A. Section 6053(a) of the Internal Revenue Code of 1986, as amended ("Code"), requires employees to furnish one or more written statements to their employers reporting all tips received in each calendar month. The statements must be furnished to the employer by the 10th day of the following month. For purposes of both the employer and employee shares of FICA taxes, the tips are deemed to be "remuneration" at the time the employee's report is furnished to the employer. Section 3121(q) of the Code was amended by section 9006 of the Omnibus Reconciliation Act of 1987, Pub. L. No. 100–203, effective January 1, 1988, to cross-reference sections 3111(a) and (b) of the Code, thereby obligating employers to pay the employer share of FICA taxes on employees' tip income "remuneration." Accordingly, effective for tips received after 1987, an employer must pay its share of FICA taxes on the tip income reported to it by its employees under section 6053(a) of the Code at the time the income is deemed to be remuneration by section 3121(q) of the Code.

B. If an employee fails to report tip income to the employer as required by section 6053(a) of the Code, or underreports tip income to the employer, the employer's liability for the portion of FICA taxes attributable to such tip income is collectible only under the "notice and demand" procedure found in the last clause of section 3121(q) of the Code. Under this procedure, the Internal Revenue Service ("Service") provides a "notice and demand" to the employer to reflect tip income not previously reported by the employee to the employer. This tip income then becomes "remuneration" under section 3121(q) for purposes of determining the employer's share of FICA taxes under sections 3111(a) and (b) of the Code.

C. Under section 6652(b) of the Code, if an employee fails to report the tip income received in any calendar month as required by section 6053(a), the employee can be assessed a penalty equal to 50 percent of the additional employee FICA tax due with respect to the tip income, unless the employee can show that the failure is due to reasonable cause and not willful neglect.

In October 1993, the Service implemented nationally its Tip Rate Education Program (''Program''). The purpose of the Program is to ensure maximum compliance by employees with the provisions of the Code relating to tip income.

The Service will accept a TRAC agreement in every District, will permit all eligible employers to enter into a TRAC agreement, and will assist applicants in understanding and meeting the requirements for participation in a TRAC agreement.

The District Director and the Employer have agreed to resolve disputes concerning the responsibilities of the Employer and the District Director under section 3121(q) of the Code and to establish procedures to prevent such disputes in the future. Therefore, the parties agree as follows:

I. DEFINITIONS

A. *Employer* means ______________ [insert name].

B. *Establishment* means each of the establishments listed by name, address, and identifying number in Attachment A. [sample attached] If the Employer has one place of business, that place of business is an Establishment.

C. *Employee* means a person employed by the Establishment who directly or indirectly receives tips of at least $20.00 per month during the course of the employee's employment.

D. *TRAC application* means a signed request to enter into a TRAC agreement submitted by mail.

E. *District Director* means the District Director of Internal Revenue for ______________ [insert name of District] or designee.

II. EFFECTIVE DATE OF AGREEMENT

A. *General rule.* Except as described below, this Agreement is effective on the first day of the first calendar quarter following the date the District Director signs the Agreement.

B. *Special rules.*

1. *Employer with Establishment open to the public before [insert date program is to go into effect ("date A")]—Applications submitted before [insert date 1 year later ("date B")].* In the case of an Employer who (1) had one or more Establishments open to the public before [insert date A], and (2) submits its TRAC application before [insert date B], the TRAC agreement is effective on the first day of the first calendar quarter following the quarter in which the application is submitted to the District Director, unless the District Director rejects the application (with respect to any or all of the Establishments) in writing within 3 months after the date of submission. (Section II. B. 5. sets forth the reasons for which the District Director may reject a TRAC application.)

2. *Employer with no Establishment open to the public before [insert Date A]—Applications submitted within 12 months after first Establishment opens.* In the case of an Employer who (1) had no Establishment open to the public before [insert date A], and (2) submits its TRAC application within 12 months after its first Establishment opens to the public, the TRAC agreement is effective on the first day of the first calendar quarter following the quarter in which the application is submitted to the District Director, unless the District Director rejects the application (with respect to any or all of the Establishments) in writing within 3 months after the date of submission. (Section II. B. 5. sets forth the reasons for which a District Director may reject a TRAC application.)

3. *Employer acquisition or public opening of Establishment—Participation and nonparticipation in Agreement.* If an Employer acquires or opens to the public an additional Establishment and the Employer wishes to include the Establishment in the Employer's TRAC agreement, the Employer must provide an addendum to Attachment A to the District Director within six months after the date of any such acquisition or public opening. The addendum will include the name, address, and identifying number of the acquired or opened Establishment. Such Establishment will be treated as participating in the TRAC agreement beginning on the date of acquisition or public opening, unless the District Director rejects the application in writing within three months after the date of submission of the addendum. If the Employer does not furnish a timely addendum, the general rule of Section II.A. applies, and thus the TRAC agreement will not become effective with respect to the additional Establishment until the first day of the first calendar quarter following the date the District Director agrees in writing to the addendum.

4. *Change in Ownership or Control.* If an Employer or Establishment currently participating in a TRAC agreement undergoes a change in ownership or control, such Employer or Establishment must provide an addendum to Attachment A to the District Director within six months after the effective date of the change. The addendum will include the name, address, and identifying number of the acquiring entity. The acquiring entity will be treated as the successor Employer under the original TRAC agreement beginning on the date of change in ownership or control unless the District Director rejects the addendum in writing within three months of its submission, in whole or in part, for the reasons set forth in Section II. B. 5. Failure to furnish an addendum may result in a revocation under Section V.B. as of the last day of the six-month period.

5. *Rejection by the District Director.* The District Director may reject a TRAC application or addendum for one of the following reasons:

a. the failure of the Employer to comply with the rules relating to the filing of any federal tax return, paying the amount of any undisputed federal tax, or making any deposit of federal taxes;

b. the inability of an Establishment to comply with the procedures set forth in Section III.; or

c. the pursuit, by the Internal Revenue Service or another federal agency, of administrative or judicial action relating to the applicant or related party.

C. *Ongoing tip examination.* A tip examination in progress on the date the Employer submits its TRAC application will not affect the effective date of this Agreement.

III. COMMITMENT OF EMPLOYER

While this Agreement is in effect, the Employer agrees to the following provisions:

A. *Educational Program.* The Employer must institute and maintain for each calendar quarter an educational program that trains newly hired Employees and periodically updates existing Employees as to their reporting obligations with respect to tip income received as either cash tips or charged tips. This educational program may include on-site or off-site training by the Establishment, video programs, and written materials, such as tip reporting booklets offered as part of new employee informational materials.

This educational program must emphasize that, in addition to charged tips attributable to Employees, all cash tips paid to and retained by the Employees must be reported to their employing Establishment. The Employer may illustrate this by informing the Employees of the Establishment's charged sales to cash sales ratio and explaining the correlation between charged tips and cash tips.

The Employer as part of this program must explain to the employees their obligation to maintain for their records the information required in Form 4070A, Employee's Daily Record of Tips. This educational program also should advise all participants of the benefits of proper tip reporting (e.g., Social Security wage credit history, increased retirement plan contributions, and creation of adequate records of tip income).

B. *Requirements regarding returns, taxes, and records.*

1. *Filing returns.*

a. *Form 941.* Each calendar quarter, the Employer must comply with the requirements for filing Form 941, Employer's Quarterly Federal Tax Return. The Form 941 must include all charged and cash tips reported by the Employees to the employing Establishment(s) in accordance with the procedures set forth in Section III. C.

b. *Forms W–2.* The Employer (or employing Establishment) must comply with the requirements for filing Forms W–2 for all the Employees and include all reported charged and cash tips on the Employees' Forms W–2, including tips verified or corrected pursuant to Section III. C.

c. *Other returns.* The Employer must comply with the requirements for filing all other required federal tax returns.

2. *Payment and deposit of taxes.* The Employer must comply with the requirements for paying the amount of any undisputed federal tax that is due and depositing federal taxes.

3. *Maintenance of records.* Each Establishment must maintain records of the following:

a. Gross receipts subject to tipping, and

b. Charge receipts showing charged tips.

The Employer must retain these records for at least 4 years after the April 15 following the calendar year to which the records relate.

4. *Availability of records.* Upon the request of the District Director, the Employer will make the following quarterly totals available, by Establishment, for statistical samplings of its Establishments:

a. Gross receipts subject to tipping,

b. Charge receipts showing charged tips,

c. Total charged tips, and

d. Total tips reported.

C. *Employee tip-reporting procedures.*

1. *Charged Tips.* Each Establishment must establish a procedure under which a written statement is prepared and processed on a regular basis (no less frequently than monthly), reflecting all charged tips for sales attributable to each directly tipped Employee. The Establishment must implement reasonable procedures under which each directly tipped Employee is given the opportunity to verify or correct any statement of proposed attribution of charged tips, in order to reflect tip outs, tip sharing, tip pooling, and other adjustments. For example, the Establishment would satisfy this paragraph if it provided a written statement that contained the following information: Employee's charged sales, Employee's total charged tips, and the ratio, as a percentage, of charged tips to charged sales.

The Establishment must also adopt a reasonable method for reporting charged tips received by indirectly tipped Employees. For example, the Employee may report to the Establishment the amount and with whom tips were shared. Alternatively, the directly tipped Employee may provide to the Establishment a copy of Form 4070A indicating the shared tips. As another example, the Establishment could furnish the indirectly tipped Employee a written statement, which that Employee would verify or correct in a manner similar to the procedure for directly tipped Employees.

The Employer's procedures must enable Employees to meet their reporting requirements under section 6053(a) of the Code. To meet these requirements, the Employee must sign the verified or corrected statement of attributed tips (no less frequently than monthly) and give the statement to the Establishment no later than the 10th day of the month following the month in which the Employee received the tips.

This verified or corrected statement (if completed by the 10th of the month for tips received during the preceding month) will satisfy the Employee's requirement of reporting charged tips to the Employer under section 6053(a). The Employer may satisfy the requirements of the section if it remits charged tips to the Employees through the payroll system under a method that ensures reporting of tips by Employees and is consistent with sections 3102 and 3402 of the Code.

2. *Cash Tips.* Each Establishment must establish a procedure under which a written statement is prepared and processed on a regular basis (no less frequently than monthly), reflecting all cash tips for sales attributable to each directly tipped Employee. For example, if the Employee signs for charged tips on a daily basis, the Employee may record the amount of cash tips received at the same time. As another example, a procedure comparable to the procedure for charged tips would be appropriate for cash tips. The Employer may also provide a separate procedure for reporting cash tips.

IV. COMMITMENT OF DISTRICT DIRECTOR

A. *General rule.* Except as provided in B. below, any section 3121(q) notice and demand issued to the Employer (or Establishment) by the District Director shall be based solely on amounts reflected on one or more of the following forms:

1. Form 4137, Social Security and Medicare Tax on Unreported Tip Income, filed by an Employee with his or her Form 1040, or

2. Form 885–T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer, prepared at the conclusion of an employee tip examination.

B. *Special rules.*

1. *Retroactive revocation.* In the event the District Director revokes the Agreement retroactively as provided under Section V. A. 1., the general rule of Section IV. A. does not apply.

2. Prospective revocation. In the event of a revocation under Section V. A. 2. or 3., or Section V. B., the general rule in Section IV. A. will apply with respect to tip income actually received by (or deemed under section 3121(q) of the Code to have been paid to) Employees at the Establishment during the

period from the effective date of the TRAC agreement until the effective date of revocation.

3. *Ongoing Tip Examination.* If the District Director has initiated a tip examination of one or more Establishments prior to the filing of the TRAC application, the District Director will not be bound by the general rule of Section IV. A., with respect to any tip income actually received by Employees at the Establishment during any calendar quarters under tip examination. TRAC will be available to the Employer for all other calendar quarters as provided in this Agreement.

C. *Compliance review.* The District Director may not evaluate the Employer (or Establishment) for compliance with the provisions of Section III. A. (pertaining to the Employer's educational program) or Section III. C. (pertaining to Employee tip-reporting procedures) until the second calendar quarter following the quarter in which this Agreement becomes effective. During the first two calendar quarters of this Agreement the District may review the Employer's (or Establishment's) progress in complying with the provisions of those Sections.

D. *Examinations and/or inspections of books and records.* The inspection of books of account or records pursuant to a tip examination or compliance review will not preclude or impede (under section 7605(b) of the Code, section 530(a)(2) of the Revenue Act of 1978, or any administrative provisions adopted by the Service) a later examination of a return or inspection of books of account or records with respect to any tax period involved in the tip examination or compliance review. The Service need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection.

V. REVOCATION

A. *Revocation by District Director.* The District Director will revoke this Agreement only for the following reasons:

1. *Failure to comply with Section III. A. or Section III. C.* If the District Director determines that the Employer (or any Establishment) has failed to substantially comply with Section III. A. (pertaining to the education program) or Section III. C. (pertaining to employee tip-reporting procedures), the District Director may retroactively revoke this Agreement. The revocation will be effective the first day of the first calendar quarter of the Employer's (or Establishment's) substantial noncompliance. The District Director must notify the Employer in writing of the revocation and the Establishment(s) to which the revocation applies. If the revocation applies to all the Establishments of the Employer, the Agreement will be terminated, as of the above-stated effective date.

2. *Failure to meet requirements of Section III. B. 1., 2., 3, and 4.* If the Employer (or any Establishment) fails to meet any of the requirements of Section III. B. 1., 2., 3., or 4. (pertaining to filing returns, paying and depositing taxes, maintenance of records, and availability of records), the District Director may revoke this Agreement. The revocation will be effective the first day of the first calendar quarter after the District Director notifies the Employer in writing that the Agreement no longer applies to the Employer (or Establishment).

3. *Employee underreporting of tips.* If the District Director determines that the Employees of an Establishment have collectively and substantially underreported tip income for at least two continuous calendar quarters despite the Employer's (or Establishment's) substantial compliance with the procedures in Section III. C. (employee-tip-reporting procedures), the District Director may revoke this Agreement with respect to the Establishment. The revocation will be effective the first day of the first calendar quarter after the District Director notifies the Employer in writing that the Agreement no longer applies to the Establishment. If the revocation applies to all the Establishments of the Employer, the Agreement will be terminated, as of the above-stated effective date.

4. *Other.* In addition to the reasons for revocation listed in this section, the District Director may revoke the Agreement when the Internal Revenue Service or another federal agency pursues an administrative or judicial action relating to the Employer or Establishment that is a party or related party to this Agreement.

B. *Revocation by Employer.* If the Employer no longer wishes this Agreement to apply to one or more Establishments, the Employer may revoke this Agreement with respect to the Establishment(s), by providing written notification to the District Director identifying the Establishments(s). The revocation by the Employer will be effective the first day of the first calendar quarter after the Employer notifies the District Director in writing. If the revocation applies to all the Establishments of the Employer, the Agreement will be terminated, as of the above-stated effective date. If an Employer fails to furnish an addendum pursuant to Section II.B.4., the Service may treat the failure as an employer revocation under this paragraph as of the last day of the six-month period described in Section II.B.4.

C. *Reapplication by Employer.* If the District Director revokes this Agreement either with respect to the Employer or with respect to an Establishment(s), the Employer may submit a new TRAC application. In the event of a reapplication, the effective date provided in Section II. A. will apply.

VI. MISCELLANEOUS

A. *Notices.* All correspondence pertaining to this Agreement, including a notice of revocation, must be sent to the parties to this Agreement at the addresses stated below, unless notified in writing of a change of address. In the event of a change of address, all correspondence must be sent to the new address.

B. *Authority.* The Employer represents that it has the authority to enter into this Agreement on behalf of itself and the Establishment(s) listed in Attachment A.

C. *Date of notices.* All notices and TRAC applications are deemed to be sent or submitted on the date of the postmark stamped on the envelope or, in the case of a notice or application sent by certified mail, the sender's receipt.

D. *Statutory changes.* The Commissioner may terminate this Agreement at any time following a significant statutory change in the FICA taxation of tips.

E. *Sunset provision.* The Commissioner of Internal Revenue may terminate prospectively the Tip Rate Education Program or TRAC agreements after [insert date 5 years after date A].

VII. PAPERWORK REDUCTION ACT

The collections of information contained in this document will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections I.B., I.D., II.B.3. and 4., III.A., III.B.3. and 4., III.C., and V.B. This information is required to comply with sections 6053(a) and 6001 of the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employer's performance under the Agreement. The collections of information are required to obtain the benefits available under the Agreement. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 47,733 hours.

The estimated annual burden per respondent/recordkeeper varies from 12 hours to 51 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated number of respondents and/or recordkeepers is 3,200.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

VIII. SIGNATURES

By signing this Agreement, the parties certify that they have read and agreed to the terms of this document, including Attachment A, Names, Addresses, and Employer Identification Numbers by Employer of Establishments Covered Under TRAC Agreements.

EMPLOYER:	INTERNAL REVENUE SERVICE
______________________	______________________ District
(Name of Employer)	
______________________	______________________
(Signature)	(Signature)
BY: ______________________	BY: ______________________
	(Director's Name)
TITLE: ______________________	TITLE: District Director
ADDRESS:	ADDRESS:
______________________	______________________
(Headquarters street address)	(Street address)
______________________	______________________
(City, state, ZIP code)	(City, state, ZIP code)
DATE: ______________________	DATE: ______________________

TRAC AGREEMENT
(Hairstyling Industry)

Attachment A

[format for individual establishments]

Employer
A & B Hairstylists
xx–xxxxxxx
Street address
City, state, zip code

[format for chains]

Employer (parent, if applicable)
XYZ Corp.
yy–yyyyyyy
Street address
City, state, zip code

Establishments (if applicable)
AB Hairstyling
Street address
City, state, zip code

CD Hairstyling
Street address
City, state, zip code

Related entity (if applicable)
UVW Corp.
zz–zzzzzzz
Street address
City, state, zip code

Establishments (if applicable)
EF Hairstyling
Street address
City, state, zip code

GH Hairstyling
Street address
City, state, zip code

Proposed Tip Reporting Agreement for Use in the Gaming Industry

Announcement 96–106

SUMMARY

The Internal Revenue Service is considering expansion of its Market Segment Understanding (MSU) Program as a means to enhance tax compliance through taxpayer education and voluntary advance agreements instead of traditional audit techniques. This announcement solicits comments on a draft model MSU Agreement entitled Tip Rate Determination Agreement (Gaming Industry).

OVERVIEW

The Service developed its MSU Program in 1993 as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the Program envisions that the Service and taxpayers in particular market segments would work together to improve tax compliance in those areas through educational efforts and other collaborative approaches rather than through traditional audit techniques.

Since 1992, the Service has entered into tip agreements with taxpayers in the gaming industry in Nevada. In general, these tip agreements establish a "tip rate" for dealers, based on information provided by the employer, and set forth an understanding that both the employer and employees who report tips at the established rate will generally not be subject to challenge by the District Director. The decision to enter into a tip agreement is entirely optional on the part of the employer and each employee; however, the Service will generally not agree to a tip agreement with a particular taxpayer unless at least 75 percent of its affected employees elect to participate.

A number of other taxpayers in the gaming industry have expressed interest in entering into a tip agreement with the Service. To ensure consistency in these agreements and provide an opportunity for public comment prior to expanding this aspect of the MSU Program, the Service has developed a draft form of tip agreement that could be used as a model for the gaming industry. This draft model Agreement is entitled "Tip Rate Determination Agreement (Gaming Industry)" and is attached to this announcement.

COMMENTS

Written comments must be received by December 14, 1996. Send submissions to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96–106), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to Office of Specialty Taxes, c/o CC:DOM:CORP:R (Announcement 96–106), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

DRAFTING INFORMATION

The principal author of this announcement is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this announcement, contact Kathy Mort, MSU program administrator, Office of Specialty Taxes, on (202) 376–0687 (not a toll-free call).

Draft release date: 10/15/96

TIP RATE DETERMINATION AGREEMENT (Gaming Industry)

between

Department of the Treasury-Internal Revenue Service
and

____
[Name of Employer]

__________________ (Taxpayer-Employer's name, address, and identifying number) ("Employer") and the District Director of Internal Revenue ("District Director") hereby agree to the following Tip Rate Determination Agreement ("Agreement" or "Gaming TRDA").

All employees who receive tips are required (1) to keep contemporaneous and accurate records of the tips received, (2) to report the tips received to their employer at least monthly, and (3) to report those tips on their federal income tax returns.

This document has been developed pursuant to the Market Segment Understanding (MSU) Program. The purpose of this document is to implement a program (1) to ensure maximum compliance by the employees of the Employer with those provisions of the Internal Revenue Code of 1986, as amended, relating to tip income; and (2) to avoid disputes under section 3121(q) of the Code. This program will minimize the burden on the Employer resulting from tip compliance programs of the District Director and reduce the enforcement costs of the District Director.

The parties therefore agree as follows:

I. DEFINITIONS

A. *District Director* means the District Director of Internal Revenue for __________________ [insert name of District] or designee.

B. *Gaming establishment* means a casino or other building, vessel, or room used for gambling. It includes land and water based establishments, bingo parlors, card rooms, slot machine and keno facilities, and any similar place where wagering is conducted.

C. *Employee* means an individual who:

1. is described in an Occupational Category defined in section I.E.,

2. has completed more than 30 consecutive days of service with the Employer, and

3. receives tips (directly or indirectly) of at least $20 a month during the course of the Employee's employment.

D. *Employer* means___________ [insert name].

E. *Occupational Category* means a category listed in Attachment A.

F. *Participating Employee* means an Employee who—

1. gives to the Employer a signed Tipped Employee Participation Agreement ("TEPA") (Attachment B), indicating participation in the tip reporting program, and

2. in accordance with this Agreement, reports tips to the Employer, as required by law, at or above the tip rate established for the Employee's Occupational Category.

At the option of the Employer, a *Participating Employee* may also include a tipped employee with 30 or fewer days of service who has given the Employer a signed TEPA.

G. *Tip Rate* means the applicable rate described in Section III.

II. COMMITMENT OF EMPLOYER

A. *Records maintenance requirements.* While this Agreement is in effect, and in addition to records otherwise required to be maintained, the Employer agrees to maintain the following records:

1. *Employee records.* For each Employee, the Employee's name, address, and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); the Employee's wage rate or rates; the Employee's reported tips and charged tips (if any); and the Employee's sales (if appropriate), shift(s), and hours.

2. *Gaming establishment records.* If the Employer is not otherwise required, by state statute or regulation, to maintain records of tips received by gaming establishment Employees,

a. For each instance of toke and chip-cashing, the dollar amount of tokes and chips presented to the cage for cashing by the toke committee (or other representatives of gaming establishment Employees), and

b. For each instance of toke and chip-cashing, a list of the tip splits furnished to the Employer by its Employees or the toke committee (or other representatives of gaming establishment Employees).

3. *Food and beverage operations records.* If the Occupational Categories defined in section I.E. include food or beverage servers,

a. Gross receipts subject to food or beverage tipping, and

b. Charge receipts showing charged tips.

4. *Tip rates records.* For each Occupational Category, all records of data used to determine the tip rates.

The Employer must retain the records listed in this section II.A. for at least 4 years after the April 15 following the calendar year to which the records relate.

B. *Requirements for furnishing information.* The Employer will furnish to the District Director the following documents:

1. *Quarterly report of employees.* A quarterly report showing, as of the last day of each quarter, (1) the total number of Employees, and (2) the total number of Participating Employees. The report is due on the last day of the month following each calendar quarter.

2. *Annual report of nonparticipating Employees.*

a. *General rule.* For each Employee who is a nonparticipating Employee on the last day of the calendar year, an annual report showing the Employee's name, address, and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); the Employee's wage rate; the Employee's reported tips and charged tips (if any); and the Employee's sales (if appropriate), shift(s), and hours. The report may list all Employees, indicating those Employees who are nonparticipating Employees, as long as the required information is included for all nonparticipating Employees. The report is due on the last day of February following each calendar year.

b. *Exception.* No report is required for a calendar year if the Employees reported tips for the calendar year at a rate equal to or greater than the rates established under section III. of this Agreement.

3. *Form 8027.* If the Occupational Categories defined in section I.E. include Employees of one or more food or beverage establishments, a copy of the Forms 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, filed for those establishments with the service center. The copies are due on the last day of February following each calendar year.

C. *Requirements for making records available at the request of the District Director.* At the request of the District Director, the Employer will furnish any of the records identified in section II.A.

D. *Requirements for filing returns and paying and depositing taxes.* The Employer will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

III. TIP RATES

A. *Methods of measuring tips.* Depending on the Occupational Category and the Employer's business practices, tips can be measured in different ways. This Agreement contemplates the following types of measurements:

1. *Actual tips.* Actual tips generally apply to Employees in Occupational Categories where pooling of tips is common. Generally, they pool the tips collected during a shift and split the total among the Employees of the Occupational Category who worked the shift.

2. *Tip rates.* Tip rates generally apply to Employees in Occupational Categories where pooling of tips is not common. The rate may be a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or other accurate basis of measurement.

B. *Methods for determining tip rates.* The Employer will determine tip rates for the Occupational Categories based on information available to the Employer, historical information provided by the District Director, and generally accepted accounting principles. The rates will specify whether the tips are received as a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or on another basis.

C. *Initial tip rates.* The initial tip rate approved for each Occupational Category is shown on Attachment A. Where Employees pool and split tips, the ''Actual tips'' method will be indicated on Attachment A.

D. *Determination of subsequent tip rates and Occupational Categories.*

1. *Annual review.* The Employer will review annually, on a calendar year basis, the tip rates assigned to its Occupational Categories. In connection with this review, the Employer may review its Occupational Categories. The initial rates for each Occupational Category shown on Attachment A will apply to the first full calendar year of this Agreement.

2. *Procedures.*

a. *Employer submission.* If the Employer believes that a revision of one or more rates or Occupational Categories is appropriate, the Employer will submit proposed revisions to the District Director by September 30. If the Employer fails to submit a proposed rate revision by September 30, the Employer will be treated as having submitted the rate in effect for the current year.

b. *District Director review.* The District Director will review the proposed rates and notify the Employer in writing of its approval or disapproval by November 30. If the District Director does not approve one or more proposed rates, the existing rate or rates will be continued until no later than the last day of the following February. If the Employer and the District Director are unable to agree upon a rate or rates by the last day of the following February, this Agreement will terminate pursuant to section V.C.

3. *Effective date of revised rates and Occupational Categories.* Approved revised rates and Occupational Categories for a calendar year will become effective on the later of (1) January 1 of the calendar year, or (2) the first day of the month following the date the Employer and the District Director agree upon a revised rate.

IV. COMMITMENT OF DISTRICT DIRECTOR

A. *Participating Employee.* The District Director agrees that it may examine a Participating Employee's tip income for any period for which a TEPA is in effect only if the Employee reports tips at a rate that is less than the tip rate for the Employee's Occupational Category.

B. *Employer.*

1. *General rule.* Except as provided in section IV.B.2. below, any section 3121(q) notice and demand issued to the Employer by the District Director with respect to tips received by Employees in the Occupational Categories defined in section I.E. shall be based solely on amounts reflected on one or more of the following forms:

a. Form 4137, Social Security and Medicare Tax on Unreported Tip Income, filed by an Employee with his or her Form 1040, or

b. Form 885–T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer, prepared at the conclusion of an employee tip examination.

2. *Special rules.*

a. *Termination.* In the event of a termination under section V., the general rule in section IV.B.1. will apply with respect to tip income actually received by (or deemed under section 3121(q) of the Code to have been paid to) Employees during the period from the effective date of this Agreement until the effective date of termination.

b. *Ongoing tip examination or TRDA validation.* If the District Director initiated a tip examination or TRDA validation of the Employer prior to the date the parties enter into this Agreement, the District Director may issue a section 3121(q) notice and demand with respect to any calendar quarters under tip examination or validation.

C. *Compliance review.* The District Director may evaluate the Employer and its Participating Employees for compliance with the provisions of this Agreement.

V. TERMINATION

A. *Termination by Employer.* The Employer may terminate this Agreement at any time.

B. *Termination by District Director.* The District Director may terminate this Agreement if:

1. *Lack of Employee participation.* At the end of any two consecutive calendar quarters, less than 75 percent of the Employees in the Occupational Categories defined in section I.E. are Participating Employees,

2. *Failure of Employer to comply with section II.* The Employer fails to meet any of the requirements of section II., or

3. *Other.* The Internal Revenue Service or another federal agency pursues an administrative or judicial action relating to the Employer or a person that is a related party to this Agreement.

C. *Termination upon failure of parties to agree to revision of tip rates.* If the Employer and the District Director fail to agree to a revision of any of the tip rates under the procedures set forth in section III.B.2.b., this Agreement will terminate.

D. *Notice of termination and effective date.* Any termination under section V.A. or B. must be in writing and will be effective on the first day of the calendar quarter following the date of the notice.

VI. MISCELLANEOUS

A. *Effective date of agreement.* This Agreement is effective when executed by the District Director.

B. *Examinations and/or inspections of books and records.* The inspection of books of account or records pursuant to a tip examination or compliance review will not preclude or impede (under section 7605(b) of the Code, section 530(a)(2) of the Revenue Act of 1978, or any administrative provisions adopted by the Service) a later examination of a return or inspection of books of account or records with respect to any tax period involved in the tip examination or compliance review. The Service need not comply with any applicable procedural restrictions (for example, providing notice under section 7605(b)) before beginning such examination or inspection.

C. *Notices.* All correspondence pertaining to this Agreement must be sent to the parties to this Agreement at the addresses stated below, unless notified in writing of a change of address. In the event of a change of address, all correspondence must be sent to the new address. All notices are deemed to be sent or submitted on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, the sender's receipt.

D. *Authority.* The Employer represents that it has the authority to enter into this Agreement.

E. *Statutory changes.* The Commissioner may terminate this Agreement at any time following a significant statutory change in the FICA taxation of tips.

F. *Sunset provision.* The Commissioner of Internal Revenue may terminate prospectively the Tip Rate Education Program or this TRDA after, 200.

VII. PAPERWORK REDUCTION ACT

The collections of information contained in this document will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections II.A, II.B., II.C., III.D., V.A., and V.D. This information is required to comply with sections 6053(a) and 6001 of the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employer's performance under the Agreement. The collections of information are required to obtain the benefits available under the Agreement. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 4,342 hours.

The estimated annual burden per respondent/recordkeeper varies from 12 hours to 99 hours, depending on individual circumstances, with an estimated average of 43 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

VIII. SIGNATURES

By signing this Agreement, the parties certify that they have read and agreed to the terms of this document, including Attachments A and B.

EMPLOYER:	INTERNAL REVENUE SERVICE
______________________________	______________________________ District
(Name of Employer)	
______________________________	______________________________
(Signature)	(Signature)

BY: ______________________	BY: ______________________ (Director's Name)
TITLE: ______________________	TITLE: District Director
ADDRESS:	ADDRESS:
______________________ (Headquarters street address)	______________________ (Street address)
______________________ (City, state, ZIP code)	______________________ (City, state, ZIP code)
DATE: ______________________	DATE: ______________________

TRDA (Gaming Industry)

Attachment A

[sample format]

Occupational Categories	*Initial Tip Rates*
Dealers	actual tips
Food servers	_% of sales
Cocktail servers	_% of sales
Bartenders	_% of sales
Room service food servers	_% of sales
Bell persons	$ /
Valets	$ /

TRDA (Gaming Industry)

Attachment B

TIPPED EMPLOYEE PARTICIPATION AGREEMENT

I am an employee of ______________________ and wish to participate in my employer's tip reporting program.

In accordance with a Tip Rate Determination Agreement (Gaming Industry) between my employer and the District Director of Internal Revenue, I agree to report my tips to my employer, as required by law, at or above the tip rate established by my employer and approved by the District Director for my Occupational Category.

EMPLOYEE

Name (printed): ______________________

Signature: ______________________

Home address: ______________________

____

Social Security Number: ______________________

DATE: ______________________

Attachments:

Copy of TRDA (Gaming Industry) and Attachment A (Occupational Categories and Tip Rates)

Foundations Status of Certain Organizations

Announcement 96–107

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified

as private foundations:
Abundant Grace Ministries Inc., Plainview, AR
African American Association for the Family Inc., Birmingham, AL
African American Interdenominal Ministerial Fellowship Inc., Athens, GA
Ahava Services Foundation Inc., Atlanta, GA
AIDS Coalition of Charlotte for Education Service and Support Inc., Charlotte, NC
Alabama Family Center Inc., Montgomery, AL
Alabama Gymnastics Development Program, Birmingham, AL
Alabama Spinal Cord Injury Association, Atalla, AL
Alabama Vector Management Society Inc., Auburn University, AL
Albany State College Sportsmans Club Inc., Albany, GA
All Creatures Great and Small of Henderson County Inc., Hendersonville, NC
Ambassador Community Choir & Orchestra Association, Winston Salem, NC
American Indian Heritage Council Inc., Charlotte, NC
Andrews Ministerial Association of Andrews North Carolina, Andrews, NC
Anniston Christian Counseling Services Inc., Anniston, AL
Arkansas Theatre Association, Beebe, AR
Associated Universities for Toxicology Research & Education, Little Rock, AR
Association for Couples in Marriage Enrichment NC Council, Greensboro, NC
Association of Environmentally Responsible Businesses, Asheville, NC
Association on Displaced Youth Inc., Decatur, GA
Astronomical Society of the Atlantic Inc., Atlanta, GA
Athens Clark Safe Cycling Association Incorporated, Athens, GA
Atlanta Council for International Cooperation Inc., Atlanta, GA
Atlanta Rehabilitation Institute Foundation Inc., Atlanta, GA
Augusta Chaplaincy Inc., Augusta, GA
Augusta Metro AAU Basketball League Inc., Augusta, GA
Augusta Right to Life Inc., Augusta, GA
Battle of Murfreesboro Reenactment Association Inc., Smyrna, TN
Beta Epsilon Boule Foundation Inc., Greensboro, NC
Bird Island Trust Inc., Boynton Beach, FL
Birmingham Metro Jazz Institute, Birmingham, AL
Black Men for the Development of Black Males Inc., Jacksonville, AL
Blueprints of a Dream Inc., Conover, NC
Boonoonoonoos, Stone Mountain, GA
Cabarrus County Bicentennial Commission Inc., Concord, NC
Calhoun Education Foundation Inc., Calhoun, GA
Calhoun-Gordon County Georgia Scholarship Fund Inc., Calhoun, GA
Camden Area Players Inc., St. Marys, GA
Canterbury Health Care Inc., Waterford, MI
Canterbury School Foundation Inc., Atlanta, GA
Cape Fear Charitable Foundation, Fayetteville, NC
Carolina Eagles Track and Field Club Inc., Raleigh, NC
Carters Kids Foundation, Memphis, TN
Catholic Media Productions, Nashville, TN
Center for Community in the Workplace, Raleigh, NC
Charlotte Foreign Policy Forum, Charlotte, NC
Chattanooga Inner City Outreach Inc., Chattanooga, TN
Child at Rest Inc., Atlanta, GA
Child Care Alliance Inc., Nashville, TN
Child Educare Center Inc., Tuscaloosa, AL
Childrens Christmas Shopping Spree Inc. of Jackson Tennessee, Jackson, TN
Childrens International Foundation, Chattanooga, TN
Childrens Living Farm Inc., Cary, NC
Childrens Video Ministries LTD, Charlotte, NC
Christians in Action, Corning, AR
Citizens Coalition for a Better Tomorrow, Winston-Salem, NC
Citizens for a Clean Industry Inc., Tar Heel, NC
City Federation of Colored Womens Club Inc., Americus, GA
Class of 1967 Scholarship Fund, Jasper, AL
Clinton Band Boosters, Clinton, TN
Coalition for the Survival of the African American Male in Tennessee, Inc., Brentwood, TN
Cocker Spaniel Rescue of Georgia Inc., Atlanta, GA
Columbia County Community Health Coalition Inc., Appling, GA
Community Action on Drug Abuse Inc., Jonesboro, AR
Community Re-Development Foundation Inc., Atlanta, GA
Concerned Citizens of Hartwell Inc., Hartwell, GA
Conquering Warriors Ministries, Birmingham, AL
Conservative Society of North Carolina, Wilmington, NC
Consumer Credit Counseling Service of Wayne County Inc., Goldsboro, NC
Contra Costa Resources Development, Martinez, CA
Cooperative Baptist Fellowship Inc., Decatur, GA
Dalton Preschool Inc., Dalton, GA
Davidson County Community Socio-Economical Center of Hope, Clemmons, NC
Dekalb Coalition for Public Education Inc., Decatur, GA
Dekalb County Childrens Organization Inc., Decatur, GA
Dickson County Soccer Association Inc., Dickson, TN
Down Syndrome Adult Residences Inc., Hoover, AL
Drug Prevention and Alternative Center Inc., Cartersville, GA
Dystonia Medical Research Foundation—Georgia Chapter Inc., Atlanta, GA
East Texas Rails to Trails, Tyler, TX
Educational Resource Inc., Montgomery, AL
Effingham County Victim Witness Assistance Program Inc., Springfield, GA
Epiphany Ministry Inc., Montgomery, AL
Family Initiative, Inc., Norwalk, OH
Fayetteville Cumberland County Advocacy Council for Persons With Disabilities, Fort Bragg, NC
FIB Economic Development Corporation Inc., Atlanta, GA
Firehouse Society, Greensboro, NC
First Friday of Charlotte Community Foundation, Charlotte, NC
First Priority of Alabama Inc., Birmingham, AL
Food for the Lambs Inc., Columbus, GA
Frenchtown Community Association, Houston, TX
Friends Incorporated of Howard County, Nashville, AR
Friends of Hatteras Island Natural Historic Maritime Forest Land Trust for Preservation Inc., Buxton, NC
Friends of Hayes Taylor Inc., Greensboro, NC

Friends of Reliance Inc., Reliance, TN
Friends of the Cayce—West Columbia Branch Library, West Columbia, SC
Friends of the Playground Inc., Raleigh, NC
Friends of the Wake County Guardian Ad Litem Program, Raleigh, NC
Foundation for St. Michaels School, Haleiwa, HI
Fuquay Varina Community Development Corporation, Fuquay Varina, NC
George C. Nicholson Aepha CSRA Chapter 407 Educational Fund Inc., Augusta, GA
Georgia Planning Group for Health Promotion, Atlanta, GA
Georgia Striders Inc., Atlanta, GA
Gibsonville Friends of the Library Inc., Gibsonville, NC
Good Faith Child Nutrition Inc., Wynne, AR
Good News Day Care and Development Center Inc., Lenoir, NC
Good Samaritan Center of Wayne County Inc., Jesup, GA
Grand Guardian Council of Indiana IOJD Educational Foundation Inc., Indianapolis, IN
Greater Little Rock Community Development Corporation Inc., Little Rock, AR
Greater Work Ministries Inc., New Bern, NC
Greenhill Human Development Corporation, Clarksville, TN
Guilford Business and Health Alliance Inc., Greensboro, NC
H. Lee Atwater Foundation Inc., Charlotte, NC
Harpeth Youth Soccer Association, Nashville, TN
Harriett Tubman Resident Corporation, Chattanooga, TN
Harry Bryce African American Dance Theatre Inc., Atlanta, GA
Hart County Hospital Foundation Inc., Hartwell, GA
Hatteras Island Adult Care Inc., Dare, NC
Haven of Hope Inc., Alpharetta, GA
Helping Hands Incorporated, Birmingham, AL
Henry County Prevention Alliance Inc., McDonough, GA
Heritage Dance Foundation Inc., Goldsboro, NC
Heritage Village of South Sebastian Inc., Fort Smith, AR
His Love, Dothan, AL
Hoke Kids Inc., Raeford, NC
Homeless Childrens Association Inc., Memphis, TN
Horton Gardens Residents Association, Memphis, TN
Hospice of Americus and Sumter County Georgia Inc., Americus, GA
House of Benefits Ministry, Russellville, AL
Houston County Jr. Pro Football Association, Erin, TN
Ideals Foundation Inc., Stone Mountain, GA
Independence County Sheriffs Posse, Batesville, AR
Institute for Creativity and Human Genius, Monroe, NC
Institute for Languages and Culture, Crestline, CA
Institute for the Harmonious Development of Man, Silver Springs, MD
Institute of African American Studies and Programs Inc., Little Rock, AR
International Athletic Center of Atlanta Inc., Atlanta, GA
International Congress on Revival, Chattanooga, TN
International Network for Higher Learning Inc., Franklin, TN
Jabril World Institute for Community and Human Enhancement Inc., Memphis, TN
Jaym Session Outreach Inc., Carolina Beach, NC
Jeffersontown Youth Football League Inc., Louisville, KY
Junior Hill Ministries Inc., Hartselle, AL
Keyboard Artists Foundation Inc., Memphis, TN
Kids are the Future Foundation Inc., Atlanta, GA
King-Chang Memorial Foundation Inc., Rockville, MD
Klowns for the Kingdom Inc., Atlanta, GA
Knoxville Rowing Association Inc., Knoxville, TN
Kokohead Keikis Playgroup, Honolulu, HI
Kokopelli Inc., Atlanta, GA
Ladies Soldiers Friend Society Inc., Nashville, TN
Larry Birgans Ministries Inc., Decatur, AL
Larry Hatchett Fishing Fund, Ellendale, TN
Last Generation Ministries, Berlin, PA
Law Enforcement Alliance of America Foundation Inc., Falls Church, VA
Law Enforcement Family Training Inc., Montgomery, AL
Lebanon County Crime Stoppers Inc., Lebanon, PA
Lebanon Valley Catholic Home Inc., Lebanon, PA
Legal Resource Center for Nonprofit Housing Sponsors Inc., Washington, DC
Liberia Committee for Relief Resettlement & Reconstruction, Washington, DC
Little Rock Air Force Base Historical Foundation Inc., Jacksonville, AR
Living Hope Ministries Inc., Duluth, GA
Living Room Inc., Atlanta, GA
Loon Lake Village Development Committee, Loon Lake, WA
Love Your Mother Inc., Chapel Hill, NC
Lovell Oklahoma Historical Foundation, Magnolia, AR
Mandarin Athletic Association Inc., Jacksonville, FL
Mary Margaret Simmons Memorial Scholarship Fund, Shelbyville, TN
MC-WAF My Child With a Future, Talladega, AL
Medi Properties Inc., Germantown, TN
Memphis Biosphere 96, Memphis, TN
Messiah Ministries, Daphne, AL
Mid Hoosier Athletic Conference, Edinburgh, IN
Mishoe Ministries Inc., Greensboro, NC
Mobile Scottish Rite Temple Preservation Foundation Inc., Mobile, AL
Montgomery Guardianship Corporation for Retarded Persons, Montgomery, AL
National Association for Education and Motivation of Young People, Little Rock, AR
National Association of Midnight Basketball Leagues Inc., Landover, MD
National Association of Pupil Services Administrators, Alexandria, VA
National Black College Alumni Hall of Fame Foundation Inc., Atlanta, GA
National Coaltn. of Engnrng. Scts. for Precllge. Math and Science Eduction, Washington, DC
National Womens Theatre Festival, Philadelphia, PA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Announcement of the Disbarment, Suspension, and Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Styvaert, Richard	San Diego, CA	CPA	July 5, 1996
Davis Jr., George L.	Washington, D.C.	Enrolled Agent	August 15, 1996

Under 31 Code of Federal Regulations, Part 10, an enrolled agent in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his resignation from such practice. The Director of Practice, in his discretion, may suspend an enrolled agent in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any enrolled agent who has resigned from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify former enrolled agents who have resigned from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of former enrolled agents who have resigned from such practice, and date of resignation. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each enrolled agent who has resigned, and will be consolidated and published in the Cumulative Bulletin.

The following individual has offered his resignation as an enrolled agent:

Name	Address	Date of Resignation
Marchioli, Anthony	Dallas, TX	July 12, 1996

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Berry, James R.	Columbus, MO	CPA	June 5, 1996 to December 4, 1997
Rohner Jr., Richard E.	Burr Ridge, IL	CPA	June 10, 1996 to June 9, 1997
Bova, Robert J.	Tampa, FL	CPA	June 10, 1996 to March 9, 1997
Rines, Robert L.	Concord, NH	Attorney	June 17, 1996 to December 16, 1998
Kimball, Randy	Rancho Cucamonga, CA	CPA	July 1, 1996 to December 31, 1996
Cole, Sherman	Oklahoma City, OK	CPA	July 1, 1996 to March 31, 1997
Barretta, Samuel N.	Southfield, MI	Attorney	August 1, 1996 to December 31, 1999
Harris, Luis F.	Orlando, FL	CPA	August 1, 1996 to October 31, 1996
Vourvoulias, James	Park Ridge, IL	CPA	August 1, 1996 to October 31, 1996
Swan, Roy E.	Salem, OR	CPA	August 1, 1996 to January 31, 1997
Hamilton, Barry K.	Twins Falls, ID	CPA	August 1, 1996 to September 30, 1996
Horton, Greta	Richland, VA	CPA	Indefinite from August 2, 1996
Addabbo, Marie P.	Manchester, CT	Enrolled Agent	September 1, 1996 to May 31, 1997
Crouch Jr., Richard E.	Miss'nViejo, CA	CPA	September 1, 1996 to February 28, 1999
Sanders Jr., Wilfred A.	Orlando, FL	CPA	September 1, 1996 to August 31, 1998
Perkins, Nancy F.	Apple Valley, MN	CPA	September 1, 1996 to November 30, 1996
Nichols, Oliver R.	Meriden, CT	CPA	September 1, 1996 to May 31, 1997
Winiemko, Ronald C.	Sterl'g Hts, MI	Attorney	September 1, 1996 to February 28, 1999
Pallman, William F.	Guilford, CT	CPA	September 30, 1996 to January 29, 1997
Gannon, Martin C.	Wallingford, CT	CPA	September 30, 1996 to December 29, 1996
Andrews, Craig A.	Hicksville, OH	CPA	September 30, 1996 to September 29, 1997

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before The Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Bower, Lewis H.	Tampa, FL	CPA	Indefinite from May 30, 1996
Reiss, Irvin L.	Newton, PA	CPA	Indefinite from June 4, 1996
Reynolds, Mark E.	Brownsburg, IN	Attorney	Indefinite from July 1, 1996
Moore, Philip J.	Rome, GA	CPA	Indefinite from July 10, 1996
Broek, Kevin J.	Omaha, NE	CPA	Indefinite from July 10, 1996
Bein, William	Beachwood, OH	Attorney	Indefinite from August 1, 1996
Henry, Gregory	Bradford, PA	Attorney	Indefinite from August 1, 1996
Sadler, George A.	Houston, TX	Attorney	Indefinite from August 1, 1996
Fuhr IV, John Henry	Dallas, TX	CPA	Indefinite from August 1, 1996
Rakov, Harris J.	Mahwah, NJ	Attorney	Indefinite from August 1, 1996
Perkell, Mark E.	S. Burlington, VT	Attorney	Indefinite from August 1, 1996
Darrah, Robert J.	Neola, IA	CPA	Indefinite from August 21, 1996
Constantino, Enrico J.	Bay Shore, NY	Attorney	Indefinite from August 27, 1996
VanLoan, Jonathan A.	Frazer, PA	Attorney	Indefinite from August 27, 1996
Bennett, John J.	Milford, CT	Attorney	Indefinite from August 27, 1996
Lavin-Munch, Carole A.	Merrionette Pk, IL	CPA	Indefinite from August 27, 1996

Numerical Finding List[1]

Bulletins 1996–27 through 1996–41

Announcements:

96–61, 1996–27 I.R.B. *72*
96–62, 1996–28 I.R.B. *55*
96–63, 1996–29 I.R.B. *18*
96–64, 1996–29 I.R.B. *18*
96–65, 1996–29 I.R.B. *18*
96–66, 1996–29 I.R.B. *19*
96–67, 1996–30 I.R.B. *27*
96–68, 1996–31 I.R.B. *45*
96–69, 1996–32 I.R.B. *38*
96–70, 1996–32 I.R.B. *40*
96–71, 1996–33 I.R.B. *16*
96–72, 1996–33 I.R.B. *16*
96–73, 1996–33 I.R.B. *18*
96–74, 1996–33 I.R.B. *19*
96–75, 1996–34 I.R.B. *29*
96–76, 1996–34 I.R.B. *29*
96–77, 1996–35 I.R.B. *15*
96–78, 1996–35 I.R.B. *15*
96–79, 1996–35 I.R.B. *15*
96–80, 1996–35 I.R.B. *16*
96–81, 1996–36 I.R.B. *13*
96–82, 1996–36 I.R.B. *14*
96–83, 1996–36 I.R.B. *14*
96–84, 1996–36 I.R.B. *14*
96–85, 1996–37 I.R.B. *20*
96–86, 1996–37 I.R.B. *21*
96–87, 1996–37 I.R.B. *21*
96–88, 1996–38 I.R.B. *150*
96–89, 1996–37 I.R.B. *22*
96–90, 1996–37 I.R.B. *22*
96–91, 1996–37 I.R.B. *23*
96–92, 1996–38 I.R.B. *151*
96–93, 1996–38 I.R.B. *151*
96–94, 1996–38 I.R.B. *153*
96–96, 1996–39 I.R.B. *41*
96–97, 1996–39 I.R.B. *41*
96–98, 1996–39 I.R.B. *42*
96–99, 1996–39 I.R.B. *42*
96–100, 1996–40 I.R.B. *10*
96–101, 1996–40 I.R.B. *10*
96–102, 1996–40 I.R.B. *11*
96–103, 1996–40 I.R.B. *12*
96–104, 1996–41 I.R.B. *10*

Court Decisions:

2058, 1996–34 I.R.B. *13*
2059, 1996–34 I.R.B. *10*
2060, 1996–34 I.R.B. *5*

Delegation Orders:

155 (Rev. 4), 1996–40 I.R.B. *9*

Notices:

96–36, 1996–27 I.R.B. *11*
96–37, 1996–31 I.R.B. *29*
96–38, 1996–31 I.R.B. *29*
96–39, 1996–32 I.R.B. *8*
96–40, 1996–33 I.R.B. *11*
96–41, 1996–35 I.R.B. *6*
96–42, 1996–35 I.R.B. *6*
96–43, 1996–36 I.R.B. *7*
96–44, 1996–36 I.R.B. *7*
96–45, 1996–39 I.R.B. *7*

Notices—Continued

96–46, 1996–39 I.R.B. *7*
96–47, 1996–39 I.R.B. *8*
96–48, 1996–39 I.R.B. *8*
96–49, 1996–41 I.R.B. *6*
96–50, 1996–41 I.R.B. *6*

Proposed Regulations:

CO–9–96, 1996–34 I.R.B. *20*
CO–24–96, 1996–30 I.R.B. *22*
CO–25–96, 1996–31 I.R.B. *30*
CO–26–96, 1996–31 I.R.B. *31*
FI–28–96, 1996–31, I.R.B. *33*
FI–32–95, 1996–34 I.R.B. *21*
FI–48–95, 1996–31 I.R.B. *36*
FI–59–94, 1996–30 I.R.B. *23*
GL–7–96, 1996–33 I.R.B. *13*
IA–26–94, 1996–30 I.R.B. *24*
IA–29–96, 1996–33 I.R.B. *14*
IA–292–84, 1996–28 I.R.B. *38*
INTL–4–95, 1996–36 I.R.B. *8*
PS–22–96, 1996–33 I.R.B. *15*
PS–39–93, 1996–34 I.R.B. *27*
REG–209827–96, 1996–37 I.R.B. *19*
REG–208215–91, 1996–38 I.R.B. *145*
REG–245562–96, 1996–41 I.R.B. *8*

Public Laws:

104–117, 1996–34 I.R.B. *19*
104–134, 1996–38 I.R.B. *7*
104–168, 1996–38 I.R.B. *8*

Railroad Retirement Quarterly Rate

1996–29 I.R.B. *14*

Revenue Procedures:

96–36, 1996–27 I.R.B. *11*
96–37, 1996–29 I.R.B. *16*
96–39, 1996–33 I.R.B. *11*
96–40, 1996–32 I.R.B. *8*
96–41, 1996–32 I.R.B. *9*
96–42, 1996–32 I.R.B. *14*
96–43, 1996–35 I.R.B. *6*
96–44, 1996–35 I.R.B. *7*
96–45, 1996–35 I.R.B. *12*
96–46, 1996–38 I.R.B. *144*
96–47, 1996–39 I.R.B. *10*
96–48, 1996–39 I.R.B. *10*

Revenue Rulings:

96–33, 1996–27 I.R.B. *4*
96–34, 1996–28 I.R.B. *4*
96–35, 1996–31 I.R.B. *4*
96–36, 1996–30 I.R.B. *6*
96–37, 1996–32 I.R.B. *4*
96–38, 1996–33 I.R.B. *4*
96–39, 1996–34 I.R.B. *4*
96–42, 1996–35 I.R.B. *4*
96–43, 1996–36 I.R.B. *4*
96–44, 1996–38 I.R.B. *4*
96–45, 1996–39 I.R.B. *5*
96–46, 1996–39 I.R.B. *5*
96–47, 1996–40 I.R.B. *7*
96–48, 1996–40 I.R.B. *4*
96–49, 1996–41 I.R.B. *4*

Tax Conventions:

1996–28 I.R.B. 36
1996–36 I.R.B. *6*
1996–40 I.R.B. *8*

Treasury Decisions:

8673, 1996–27 I.R.B. *4*
8674, 1996–28 I.R.B. *7*
8675, 1996–29 I.R.B. *5*
8676, 1996–30 I.R.B. *4*
8677, 1996–30 I.R.B. *7*
8678, 1996–31 I.R.B. *11*
8679, 1996–31 I.R.B. *4*
8680, 1996–33 I.R.B. *5*
8681, 1996–37 I.R.B. *17*
8682, 1996–37 I.R.B. *4*

[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1996–27 through 1996–41

*Denotes entry since last publication

Revenue Procedures:

80–27
Modified by
96–40, 1996–32 I.R.B. *8*

87–32
Modified by
TD 8680, 1996–33 I.R.B. *5*

92–20
Modified by
TD 8680, 1996–33 I.R.B. *5*

95–29
Superseded by
96–36, 1996–27 I.R.B. *11*

95–29A
Superseded by
96–36, 1996–27 I.R.B. *11*

95–30
Superseded by
96–42, 1996–32 I.R.B. *14*

[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.